

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**CHRISTOPHER DAVIS, JR.,**  
*Plaintiff*

§  
§  
§  
§  
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§  
§  
§

**V.**

**UNITED STATES LIABILITY  
INSURANCE COMPANY,**  
*Defendant.*

**Civil Action No. \_\_\_\_\_**  
**JURY**

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**INDEX OF DOCUMENTS**

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1. **Plaintiff's Original Petition** (filed 05/09/2019)
2. **Plaintiff's First Amended Petition** (filed 05/23/2019)
3. **Defendant's Original Answer** (filed 06/13/2019)
4. **Defendant's Notice of Removal** (filed 06/13/2019)

**EXHIBIT "A"**

THE STATE OF TEXAS:

CHERYL FULCHER - DISTRICT CLERK  
118 MAIN STREET  
SULPHUR SPRINGS, TX 75482

ATTORNEY FOR PLAINTIFF OR DEFENDANT

PAUL A. BEZNEY  
1700 PACIFIC AVENUE SUITE 4450  
DALLAS, TX 75201-3005

## CITATION FOR PERSONAL SERVICE

TO: BERKSHIRE HATHAWAY GLOBAL INSURANCE  
SERVICES, LLC d/b/a UNITED STATES LIABILITY  
INSURANCE COMPANY

Registered Agent: CORPORATION SERVICES COMPANY  
d/b/a CSC-LAWYERS INCORPORATING  
SERVICES COMPANY  
211 E. 7<sup>TH</sup> STREET, SUITE 620  
AUSTIN, TX 78701

\*Wherever they may be found\*

DEFENDANT:

You are hereby commanded to appear before the 62ND JUDICIAL DISTRICT Court of Hopkins County, Texas, to be held at the courthouse of said County in the City of Sulphur Springs, Hopkins County, Texas, by filing a written answer to the petition of plaintiff's on or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof a copy of which accompanies this citation, in Cause No. CV44031

CHRISTOPHER DAVIS JR

Vs.

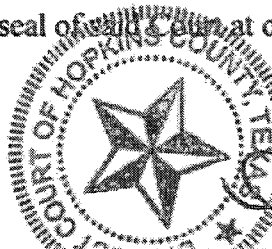
BERKSHIRE HATHAWAY GLOBAL  
INSURANCE SERVICES, LLC D/B/A  
UNITED STATES LIABILITY  
INSURANCE COMPANY

Plaintiff's Original Petition, Filed in said Court on 9th day of May, 2019.

NOTICE TO DEFENDANT: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

WITNESS, CHERYL FULCHER, DISTRICT CLERK OF THE DISTRICT COURT OF HOPKINS COUNTY, TEXAS.

Issued and given under my hand and seal of said Court at office, this the 09th day of May A.D., 2019.



CHERYL FULCHER - DISTRICT CLERK  
HOPKINS COUNTY, TEXAS

*[Signature]*, DEPUTY

### OFFICER/AUTHORIZED PERSON RETURN

Came to hand at 2:31 o'clock P.M., on the 10<sup>TH</sup> day of MAY, 2019  
Executed at (address) 211 E. 7<sup>TH</sup> ST. Ste 620 in TRAVIS County at 2:52 o'clock P.M. on the 13<sup>TH</sup> day of MAY, 2019, by delivering to the within named ADAM WAYS, in person, a true copy of this citation together with the accompanying copy of the petition, having first attached such copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.  
TOTAL SERVICE FEE \$ \_\_\_\_\_

*[Signature]*  
Sheriff/Const/PPS  
Travis County, Texas  
BY *[Signature]*  
PSC-16259

CAUSE NO. CV44031

<b>CHRISTOPHER DAVIS, JR.,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
<b>V.</b>	§	<b>62<sup>nd</sup> JUDICIAL DISTRICT</b>
	§	
<b>BERKSHIRE HATHAWAY GLOBAL</b>	§	
<b>INSURANCE SERVICES, LLC D/B/A</b>	§	
<b>UNITED STATES LIABILITY</b>	§	
<b>INSURANCE COMPANY,</b>	§	
<b>Defendant.</b>	§	<b>HOPKINS COUNTY, TEXAS</b>

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CHRISTOPHER DAVIS, JR., who files this, Plaintiff's Original Petition, against BERKSHIRE HATHAWAY GLOBAL INSURANCE SERVICES, LLC D/B/A UNITED STATES LIABILITY INSURANCE COMPANY, and for causes of action would respectfully show the court as follows:

**I. PRELIMINARY INFORMATION AND DEFINITIONS**

Insured:	Christopher Davis, Jr. ("Plaintiff")
Policy Number:	CP 1618335A ("Policy")
Defendant's File Number:	K117722 ("File" or "File Number")
Date of Loss:	May 11, 2017 ("Date of Loss")
Insured Property:	420 Main Street Sulphur Springs, Texas 75482 ("Insured Property")
Insurer:	Berkshire Hathaway Global Insurance Services, LLC d/b/a United States Liability Insurance Company ("Defendant")
Defendant's Registered Agent:	Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company 211 E. 7 <sup>th</sup> Street, Suite 620

Austin, Texas 78701  
("Defendant's Registered Agent")

Defendant's Counsel: Richard J. Kasson  
Gonzalez Chiscano Angulo & Kasson, PC  
9601 McAllister Freeway 410, Suite 401  
San Antonio, Texas 78216  
("Defendant's Counsel")

Triple Crown Roofing & Inspection performed by Estimator Blake Johnson  
Construction, Inc. Estimate: Total Estimate Amount: \$89,232.35  
("Triple Crown Estimate")

## **II. DISCOVERY CONTROL PLAN**

Plaintiff intends for discovery to be conducted under Level II, pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

## **III. PARTIES**

Plaintiff is an individual who resides in Texas.

Defendant is a foreign company registered to engage in the business of insurance in the State of Texas. Defendant may be served with process by in person or certified mail, return receipt requested, by serving Defendant's Counsel, who has already appeared herein.

## **IV. JURISDICTION**

Damages sought are within the jurisdictional limits of this Court. Plaintiff seeks monetary relief of over \$200,000.00, but no more than \$1,000,000.00.

The Court has jurisdiction over Defendant because Defendant engages in the business of insurance in the State of Texas and the causes of action arise out of Defendant's business activities in the State of Texas.

## **V. VENUE**

Venue is proper in Hopkins County, Texas because the Insured Property is situated in



Hopkins County, Texas and/or the contract was signed in Hopkins County, Texas.<sup>1</sup>

## **VI. FACTS**

Plaintiff is the owner of the Policy issued by Defendant. Plaintiff owns the Insured Property.

Defendant sold the Policy, insuring the property that is the subject of this lawsuit to Plaintiff. Plaintiff suffered a significant loss with respect to the Insured Property.

Plaintiff submitted a claim to Defendant with Date of Loss for wind/hail damage to the Insured Property.

Defendant assigned the File Number to Plaintiff's claim.

Defendant hired Estimator Blake Johnson with Triple Crown Roofing & Construction, Inc. to provide a repair estimate to the affected Insured Property. Following Johnson's inspection of the affected Insured Property, Plaintiff learned that Defendant's estimate was grossly undervalued. Specifically, Johnson estimated it would cost \$89,232.35 to repair the affected Insured Property. Defendant estimated it would cost \$1,601.26 to repair the same Insured Property. Defendant, in bad faith, undervalued the damage to the Insured Property by approximately \$87,600.00. The Triple Crown Estimate is attached hereto as **Exhibit A**.

Defendant failed to properly adjust the claim and/or failed to timely pay the claim with obvious knowledge and evidence of serious cosmetic and structural damage. Defendant's conduct constitutes violations of the Texas Insurance Code. Defendant failed to make an attempt to settle Plaintiff's claim in a fair manner although it was aware of its liability to Plaintiff under the Policy. Defendant's conduct constitutes violations of the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*.<sup>2</sup>

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<sup>1</sup> TEX. CIV. PRAC. & REM. CODE. § 15.032.

<sup>2</sup> TEX. INS. CODE § 541.060(2).

Specifically, Defendant failed to offer Plaintiff adequate compensation, without any explanations as to why payment was not being made. Furthermore, Defendant did not communicate that any payments would be forthcoming to pay for the losses covered under the Policy nor did it provide any explanation for the failure to adequately settle Plaintiff's claim. Defendant's conduct constitutes violations of the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*.<sup>3</sup>

Defendant refused to compensate Plaintiff, under the terms of the Policy, even though Defendant failed to conduct a reasonable investigation. Specifically, Defendant performed an outcome-oriented investigation of Plaintiff's claim, which resulted in a biased, unfair and inequitable evaluation of Plaintiff's losses on the Insured Property. Defendant's conduct constitutes violations of the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*.<sup>4</sup>

Defendant failed to meet its obligations under the Texas Insurance Code regarding payment of the claim without delay. Specifically, Defendant has delayed payment of Plaintiff's claim longer than allowed and, to date, Plaintiff has not yet received payment for the claim. Defendant's conduct constitutes a violation of the *Texas Prompt Payment of Claims Act*.<sup>5</sup>

From and after the time Plaintiff's claim was presented to Defendant, the liability of Defendant to pay the full claim in accordance with the terms of the Policy was reasonably clear. However, Defendant has refused to pay Plaintiff, despite there being no basis whatsoever on which a reasonable insurance company would have relied on to deny payment. Defendant's conduct equates to breaches of the common law duty of good faith and fair dealing. As a result of Defendant's acts and omissions, Plaintiff was forced to retain the attorney who is representing

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<sup>3</sup> TEX. INS. CODE § 541.060(3).

<sup>4</sup> TEX. INS. CODE § 541.060(7).

<sup>5</sup> TEX. INS. CODE §§ 542.051-542.061.

Plaintiff in this matter.

## **VII. CAUSES OF ACTION**

Pursuant to Texas Rules of Civil Procedure 47 and 48, and pleading rules, allegations in this Petition are made in the alternative.

### **COUNT ONE: BREACH OF CONTRACT**

Defendant's conduct, as described in this Petition, constitutes a breach of the insurance contract made between Defendant and Plaintiff. Defendant's failure and refusal, as described above, to pay the compensation as obligated to do so under the terms of the Policy in question, and under the laws of the State of Texas, constitutes material breach of the insurance contract with Plaintiff. Furthermore, Plaintiff has suffered damages in the form of actual damages, consequential damages and reasonable and necessary attorneys' fees for such violations of the Texas Insurance Code.

Defendant's conduct constitutes multiple violations of the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*.<sup>6</sup> All violations set forth are made actionable by TEX. INS. CODE § 541.151.

- a. Defendant's unfair practice, as described above, of misrepresenting to Plaintiff material facts relating to the coverage at issue, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance<sup>7</sup>;
- b. Defendant's unfair settlement practice, as described above, of failing to attempt in good faith to effectuate a prompt, fair and equitable settlement of the claim, even though Defendant's liability under the Policy was reasonably clear, constitutes an

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<sup>6</sup> TEX. INS. CODE, Chapter 541.

<sup>7</sup> TEX. INS. CODE §§ 541.051, 541.060-541.061.

unfair method of competition and an unfair and deceptive act or practice in the business of insurance<sup>8</sup>;

- c. Defendant's unfair settlement practice, as described above, of failing to promptly provide Plaintiff with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for its offer of a compromise settlement of the claim, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance<sup>9</sup>;
- d. Defendant's unfair settlement practice, as described above, of failing within a reasonable time to affirm or deny coverage of the claim or to submit a reservation of rights to Plaintiff constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance<sup>10</sup>; and/or
- e. Defendant's unfair settlement practice, as described above, of refusing to pay the claim without conducting a reasonable investigation, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance.<sup>11</sup>

Defendant's conduct constitutes multiple violations of the *Texas Prompt Payment of Claims Act*.<sup>12</sup> All violations set forth are made actionable by TEX. INS. CODE § 542.060.

- a. Defendant's failure, as described above, to acknowledge receipt of Plaintiff's claim, commence investigation of the claim and request from Plaintiff all items, statements and forms reasonably required within the applicable time constraints,

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> TEX. INS. CODE §§ 541.051, 541.060-541.061; Noncompliance with Texas Insurance Code Chapter 542: "The Prompt Payment of Claims Act."

<sup>12</sup> TEX. INS. CODE, Chapter 542.

constitutes a non-payment of the claim.<sup>13</sup>

- b. Defendant's delay of payment of Plaintiff's claim, as described above, following its receipt of all items, statements and forms reasonably requested and required, longer than the amount of time provided for, constitutes a non-prompt payment of the claim.<sup>14</sup>

#### **COUNT TWO: BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

Defendant's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to Plaintiff in accordance with Plaintiff's insurance contract.

Defendant's failure, as described above, to adequately and reasonably investigate and evaluate Plaintiff's claim, although at that time Defendant knew or should have known by the exercise of reasonable diligence that its liability was reasonably clear, constitutes a breach of the common law duty of good faith and fair dealing.

#### **COUNT THREE: BREACH OF FIDUCIARY DUTY**

Defendant agreed to act as a fiduciary for Plaintiff under the insurance contract. Defendant breached its fiduciary duty by failure to act in Plaintiff's best interests.

#### **COUNT FOUR: TEXAS PROMPT PAYMENT OF CLAIMS ACT**

Defendant's conduct, as described above, constitutes multiple violations of the *Texas Prompt Payment of Claims Act*.

As described above, Plaintiff has a claim under an insurance policy, the insurer is liable for the claim and the insurer has failed to comply with the requirements of the *Texas Prompt Payment of Claims Act*.<sup>15</sup>

As described above, Defendant failed to perform one or more of the following duties not

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<sup>13</sup> TEX. INS. CODE §§ 542.055-542.060.

<sup>14</sup> *Id.*

<sup>15</sup> TEX. INS. CODE §§ 542.051-542.061.

later than the 15th day (30th day if Defendant is a surplus lines insurer) after receipt of notice of the claim:

- Acknowledge the claim. Defendant failed to acknowledge receipt of the claim, including separate claims arising from the same incident<sup>16</sup>;
- Record the acknowledgement. Defendant failed to make a record of the date, manner and content of the acknowledgement<sup>17</sup>;
- Commence the investigation. Defendant failed to commence a reasonable investigation of the claim<sup>18</sup>; and/or
- Request information from Plaintiff. Defendant failed to request from the Plaintiff all items, statements and forms reasonably required from Plaintiff.<sup>19</sup>

As described above, Defendant failed to perform one or more of the following duties after Defendant received all items, statements and forms reasonably required from Plaintiff:

- Accept or reject the claim. Defendant failed to notify Plaintiff by the 15th business day that Defendant either accepted or rejected the claim<sup>20</sup>;
- State reasons for any rejection. Defendant failed to notify Plaintiff of any reasons for denying such claim<sup>21</sup>;
- Ask for more time and reasons why. Defendant failed to notify Plaintiff it needed more time and the reasons for seeking more time<sup>22</sup>;
- Pay the claim after accepting. Defendant failed to pay the claim within five business days (20th business day if Defendant is a surplus lines insurer)<sup>23</sup>;

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<sup>16</sup> TEX. INS. CODE § 542.055(a)(1).

<sup>17</sup> TEX. INS. CODE § 542.055(c).

<sup>18</sup> TEX. INS. CODE § 542.055(a)(2).

<sup>19</sup> TEX. INS. CODE § 542.055(a)(3).

<sup>20</sup> TEX. INS. CODE § 542.056(d).

<sup>21</sup> TEX. INS. CODE § 542.056(c).

<sup>22</sup> TEX. INS. CODE § 542.056(d).

- Pay the claim after Plaintiff performs any condition. If Defendant sought a condition on Plaintiff, it did not pay such claim within five business days (20th business day if Defendant is a surplus lines insurer) after such condition was satisfied<sup>24</sup>; and/or
- Pay the claim within 60 days after receipt of information. Defendant failed to pay the claim within 60 days after receiving the items requested from Plaintiff.<sup>25</sup>

**COUNT FIVE: TEXAS UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES ACT**

Defendant's conduct, as described above, constitutes multiple violations of the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*.

Defendant engaged in one or more of the following settlement practices with respect to a claim made by Plaintiff:

- Misrepresenting to Plaintiff a material fact or policy provision relating to the coverage at issue<sup>26</sup>;
- Failing to attempt in good faith to effectuate a prompt, fair and equitable settlement of:
  - The claim with respect to which Defendant's liability had become reasonably clear<sup>27</sup>; or
  - A claim under one portion of the Policy with respect to which Defendant's liability had become reasonably clear in order to influence Plaintiff to settle another claim under another portion of the coverage, unless payment

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<sup>23</sup> TEX. INS. CODE § 542.057(a),(c).

<sup>24</sup> TEX. INS. CODE § 542.057(b),(c).

<sup>25</sup> TEX. INS. CODE § 542.058(a).

<sup>26</sup> TEX. INS. CODE § 541.060(1).

<sup>27</sup> TEX. INS. CODE § 541.060(2)(A).

under one portion of the coverage constituted evidence of liability under another portion<sup>28</sup>;

- Failing to provide promptly to Plaintiff a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for Defendant's denial of the claim or for the offer of a compromise settlement of the claim<sup>29</sup>;
- Failing within a reasonable time to:
  - Affirm or deny coverage of the claim to Plaintiff<sup>30</sup>;
  - Submit a reservation of rights to Plaintiff<sup>31</sup>;
- Refusing, failing or unreasonably delaying an offer of settlement under first-party coverage on the basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the Policy<sup>32</sup>;
- Undertaking to enforce a full and final release of the claim from Plaintiff when only a partial payment had been made, unless the payment was a compromise settlement of a doubtful or disputed claim<sup>33</sup>; and/or
- Refusing to pay the claim without conducting a reasonable investigation with respect to the claim.<sup>34</sup>

Further, Defendant engaged in one or more of the following settlement practices, in violation of the *Texas Unfair Claim Settlement Practices Act*, with respect to the claim made by Plaintiff:

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<sup>28</sup> TEX. INS. CODE § 541.060(2)(B).

<sup>29</sup> TEX. INS. CODE § 541.060(3).

<sup>30</sup> TEX. INS. CODE § 541.060(4)(A).

<sup>31</sup> TEX. INS. CODE § 541.060(4)(B).

<sup>32</sup> TEX. INS. CODE § 541.060(5).

<sup>33</sup> TEX. INS. CODE § 541.060(6).

<sup>34</sup> TEX. INS. CODE § 541.060(7).



- Misrepresentations and false advertising of policy contracts;
- False information and advertising generally;
- Deceptive names, words, symbols, devises and slogans; and/or
- Misrepresentation of the insurance policies.<sup>35</sup>

Defendant engaged in one or more of the following settlement practices with respect to the claim made by Plaintiff:

- Making an untrue statement of material fact;
- Failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made;
- Making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of a material fact;
- Making a material misstatement of law; and/or
- Failing to disclose a matter required by law to be disclosed, including failing to make disclosure in accordance with another provision of the Texas Insurance Code.<sup>36</sup>

## **VIII. DAMAGES**

Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and/or producing causes of damages sustained by Plaintiff.

a. For breach of contract, Plaintiff is entitled to regain the benefit of his bargain, which is the amount of the Policy benefits withheld, together with consequential damages and attorneys' fees.

b. For breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to actual damages, direct and indirect consequential damages, exemplary damages and mental anguish as to be determined by the jury.<sup>37</sup>

c. For noncompliance with the *Texas Prompt Payment of Claims Act*, which is strict

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<sup>35</sup> TEX. INS. CODE §§ 541.051-541.052, 541.059-541.060, 542.001.

<sup>36</sup> TEX. INS. CODE § 541.061.

<sup>37</sup> See *Lee v. Safemate Life Ins. Co.*, 737 S.W.2d 84, 1987 Tex. App. LEXIS 8111 (Tex. App.—El Paso 1987, writ dismissed).

liability without any good faith exceptions, Plaintiff is entitled to the amount of his claim, as well as eighteen (18) percent interest on the total amount of the claim per annum post-judgment interest, as allowed by law, and for any other further relief, either at law or in equity, to which Plaintiff may show himself to be justly entitled.<sup>38</sup>

d. For noncompliance with the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*, Plaintiff is entitled to actual damages, which includes the loss of the benefits that should have been paid pursuant to the Policy, including but not limited to, direct and indirect consequential damages, mental anguish, court costs and mandatory attorneys' fees.<sup>39</sup> For knowing and intentional conduct of the acts complained of, Plaintiff asks for three times economic damages and three times mental anguish damages.<sup>40</sup>

e. Plaintiff seeks attorneys' fees at a contingent rate of 35%. If attorneys' fees must be quantified at an hourly rate, Plaintiff seeks attorney fees at \$350.00 an hour.<sup>41</sup> Attorneys' fees are awarded to a party as part of the damages owed by an insurance company that violates this chapter, and it is appropriate to require the insurer to pay a contingency fee, which may be greater than an hourly fee. The specter of large attorneys' fee awards may serve as additional incentive to the insurance company to respond promptly and diligently to its insured's claims.

f. Furthermore, the denial and/or wrongful delay to provide Plaintiff with insurance benefits by Defendant was apparently part of a common plan, routine, scheme and/or design calculated to deny insurance benefits to policyholders. In order to punish Defendant and to set an example and thereby prevent other policyholders from being treated in this manner, exemplary damages should be awarded. Accordingly, Plaintiff seeks exemplary damages in an amount the jury deems appropriate.

## **IX. ATTORNEYS' FEES**

Request is made for all costs and reasonable and necessary attorneys' fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just, as

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<sup>38</sup> See *Am. Nat'l. Prop. & Cas. Co. Inc. v. Patty*, No. 05-00-01171-CV, 2001 Tex. App. LEXIS 5493 (Tex. App.—Dallas Aug. 15, 2001, pet. denied) (unpublished). The formula for calculating the interest penalty under this article is "I = P R T," where "I" is interest, "P" equals the principal, "R" equals the rate of interest, and "T" equals time over which interest is to be calculated. Thus, where the insurer tendered less than the face value of the policy, the penalty should have been calculated until judgment was entered against the insurer. Tender of partial payment of a claim does not reduce the penalty: the penalty is calculated based on the amount of the "claim," not the difference between the claim and any partial payment that is made. See *Republic Underwriters Ins. Co. v. Mex-Tex, Inc.*, 106 S.W.3d 174, 183-84 (Tex. App.—Amarillo 2003, pet. denied); *Higginbotham v. State Farm Mut. Auto. Ins. Co.*, 103 F.3d 456, 461 (5th Cir. 1997). Violations of Tex. Ins. Code § 542 are strict liability without any exception.

<sup>39</sup> See *Rosenblatt v. Freedom Life Ins. Co. of Am.*, 240 S.W.3d 315, 2007 Tex. App. LEXIS 6177 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

<sup>40</sup> See TEX. INS. CODE § 541.152 and TEX. BUS. & COM. CODE § 17.50.

<sup>41</sup> See *Mid-Century Ins. Co. v. Barclay*, 880 S.W.2d 807, 1994 Tex. App. LEXIS 1480 (Tex. App.—Austin 1994, writ denied).

provided by: (a) Section 17.50(d) of the Texas Business and Commerce Code; (b) Chapter 38 of the Texas Civil Practice and Remedies Code; (c) Section 37.009 of the Texas Civil Practice and Remedies Code; and (d) common law.

**X. JURY DEMAND**

Plaintiff hereby requests a trial by jury of all issues of fact in this case and has tendered the jury fee.

**XI. PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff respectfully prays that Defendant be cited to appear and answer herein, and that upon final hearing of this case, judgment be entered for Plaintiff against Defendant for actual damages requested above in an amount in excess of the minimum jurisdictional limits of the Court, together with pre-judgment and post-judgment interest at the maximum rate allowed by law, attorneys' fees, costs of court, and such other and further relief to which Plaintiff may be entitled at law or in equity, whether pled or unpled.

Respectfully submitted,

**ADKERSON, HAUDER & BEZNEY, P.C.**

By: /s/ Paul A. Bezney

Paul A. Bezney

State Bar No. 00787077

1700 Pacific Avenue, Suite 4450

Dallas, Texas 75201

Telephone: 214/740-2500

Facsimile: 214/740-2544

E-mail: [bezney@ahblaw.net](mailto:bezney@ahblaw.net) (e-file only)

**ATTORNEY FOR PLAINTIFF**



## **Triple Crown Roofing & Construction, Inc.**

Triple Crown Roofing & Construction, Inc.  
1317 W. Industrial Dr.  
Sulphur Springs, Tx 75482  
Tax Id: 9073023  
RCAT License# 03-0287

Client: Kiffer Davis  
Property: 429 Main St  
Sulphur Springs, TX 75482

Operator: BLAKE

Estimator: BLAKE JOHNSON  
Company: TRIPLE CROWN CONSTRUCTION

Business: (903) 335-0168  
E-mail: blake@triplecrownusa.com

Type of Estimate: Hail  
Date Entered: 11/1/2017 Date Assigned:

Price List: TXDF8X\_AUG18  
Labor Efficiency: Restoration/Service/Remodel  
Estimate: KIFFER\_DAVISCOMMECIA

Please review the enclosed line itemized bid for the work to be performed at the above referenced property.

This scope does not include any "unforeseen" or "hidden" damages that may be associated with the property. If additional damages are found, work will cease and they will be addressed and reviewed prior to completion.

### **Incurred Cost of General Contractor Overhead & Profit**

**Triple Crown Roofing & Construction, Inc. does not employ laborers to perform restoration work. Triple Crown Roofing & Construction, Inc. subcontracts all repair work to specialty contractors.**

**General Overhead** are expenses incurred by a General Contractor, that cannot be attributed to individual projects, and include any and all expenses necessary for the General Contractor to operate their business.

Examples (including but not limited to): General and Administrative (G&A) expenses, office rent, utilities, office supplies, salaries for office personnel, depreciation on office equipment, licenses, and advertising.

**General Overhead** expenses are not included in Xactware's unit pricing, but are typically added to the estimate as a percentage of the total bid along with the appropriate profit margin. These two costs together constitute what is normally referred to in the insurance restoration industry as General Contractor's O&P, or just O&P.

**Profit** is typically added to the cost of a construction-related job to allow the entity performing the work to grow their company through reinvestment.

### **Incurred Cost of Supervision / Project Management Hours**

**Job-Related Overhead** are expenses that can be attributed to a project, but cannot be attributed to a specific task and include any and all necessary expenses to complete the project other than direct materials and labor. Examples (including but not limited to): Project managers, on site portable offices and restroom facilities, temporary power and fencing, security if needed, etc.

Job Related Overhead expenses should be added as separate line items to the Xactimate estimate. This is done within the Line Item Entry window of an Xactimate estimate by selecting the proper price list items, or creating your own miscellaneous items.

Source: Xactware White Paper: Overhead and Profit



## **Triple Crown Roofing & Construction, Inc.**

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Triple Crown Roofing & Construction, Inc.  
1317 W. Industrial Dr.  
Sulphur Springs, Tx 75482  
Tax Id: 9073023  
RCAT License# 03-0287

### **Incurred Cost of Labor Minimum Charges**

Small jobs performed by subcontractors may require a minimum number of hours or cost to cover the known drive-time, setup time, and applicable administrative costs as well as time needed to perform the repair. Labor minimums are separate from base service charges.

**Triple Crown Roofing & Construction, Inc. does not employ laborers to perform restoration work. Triple Crown Roofing & Construction, Inc. subcontracts all repair work to specialty contractors.**

**Labor Minimum vs. Base Service Charges** The key distinction between a labor minimum and a service charge is that the minimum charge includes time (labor) needed to actually perform the work while the service charge does not. Service charges, as defined, include only the drive-time and mobilization fees which are applied in many cases regardless of the amount of work being done. Minimum charges on the other hand, are no longer needed as the amount of labor required to perform the task exceeds the required minimum hours or cost.

Thank you for the opportunity for your business.

Triple Crown Roofing and Construction, Inc.  
Blake Johnson 903-335-0168

**Triple Crown Roofing & Construction, Inc.**

Triple Crown Roofing & Construction, Inc.  
 1317 W. Industrial Dr.  
 Sulphur Springs, Tx 75482  
 Tax Id: 9073023  
 RCAT License# 03-0287

**KIFFER\_DAVISCOMMECIA****Metal Roofing**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
12a. Remove Metal roofing	6,096.00 SF	0.39	0.00	196.14	475.48	3,049.06
12b. Metal roofing	6,096.00 SF	0.00	4.92	3,143.25	6,132.24	39,267.81
17a. Remove Neoprene pipe jack flashing for metal roofing	1.00 EA	6.11	0.00	0.50	1.22	7.83
17b. Neoprene pipe jack flashing for metal roofing	1.00 EA	0.00	46.64	5.65	9.68	61.97
14a. Remove Steel rake/gable trim - color finish	225.00 LF	0.46	0.00	8.54	20.70	132.74
14b. Steel rake/gable trim - color finish	225.00 LF	0.00	5.07	139.77	237.30	1,517.82
15a. Remove Drip edge	105.00 LF	0.26	0.00	2.25	5.46	35.01
15b. Drip edge	105.00 LF	0.00	1.87	21.83	40.40	258.58
16a. Remove Closure strips for metal roofing - inside and/or outside	220.00 LF	0.64	0.00	11.62	28.16	180.58
16b. Closure strips for metal roofing - inside and/or outside	220.00 LF	0.00	1.65	39.21	74.46	476.67
Totals: Metal Roofing				3,568.76	7,025.10	44,988.07

**Insulation**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
10a. Remove Vinyl-faced/laminated insulation - 3"	6,400.80 SF	0.18	0.00	95.05	230.42	1,477.61
10b. Vinyl-faced/laminated insulation - 3"	6,400.80 SF	0.00	1.55	1,077.25	2,036.00	13,034.49
Totals: Insulation				1,172.30	2,266.42	14,512.10

**Gutters**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
7a. Remove Gutter / downspout - box - aluminum - 7" to 8"	175.00 LF	0.39	0.00	5.63	13.66	87.54
7b. Gutter / downspout - box - aluminum - 7" to 8"	175.00 LF	0.00	16.45	431.83	614.62	3,925.20
22. Metal Structure Installer - per hour	8.00 HR	0.00	71.23	47.01	113.96	730.81


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**CONTINUED - Gutters**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
<i>Additional time to fabricate/install gutters.</i>						
Totals: Gutters				484.47	742.24	4,743.55

**HVAC**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
6. Comb HVAC units per Paul's Heat and Air	1.00 EA	0.00	550.00	45.38	110.00	705.38
Totals: HVAC				45.38	110.00	705.38

**Miscellaneous**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
1. Dumpster load - Approx. 30 yards, 5-7 tons of debris	1.00 EA	542.00	0.00	44.72	108.40	695.12
2. Telehandler/forklift and operator	40.00 HR	0.00	126.71	418.14	1,013.68	6,500.22
5. Temporary toilet (per month)	1.00 MO	0.00	201.80	16.65	40.36	258.81
18. Commercial Supervision / Project Management - per hour	60.00 HR	0.00	60.00	297.00	720.00	4,617.00
Totals: Miscellaneous				776.51	1,882.44	12,071.15
<b>Line Item Totals: KIFFER_DAVISCOMMECIA</b>				<b>6,047.42</b>	<b>12,026.20</b>	<b>77,020.25</b>


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**Summary**

Line Item Total	58,946.63
Material Sales Tax	1,184.31
Subtotal	60,130.94
Overhead	6,013.10
Profit	6,013.10
Comm. Rpr/Rmdl Tax	4,863.11
<b>Replacement Cost Value</b>	<b>\$77,020.25</b>
<b>Net Claim</b>	<b>\$77,020.25</b>

\_\_\_\_\_  
 BLAKE JOHNSON

The parties acknowledge and agree that CONTRACTOR is providing its services exclusively to Owner, and not to Owner's insurance company, mortgage company, or any other third party not a part of this Contract. CONTRACTOR will, if requested by Owner, meet with Owner's insurance representative to discuss the specific damage which Owner's home has suffered, and the scope of work which CONTRACTOR recommends in order to return Owner's roof to its pre-damage condition, however Owner acknowledges that CONTRACTOR is not a public adjuster and does not provide public adjusting services to its customers.

Property Owner has 3 days to cancel this contract. X \_\_\_\_\_ Initial Date: \_\_\_\_\_

X \_\_\_\_\_ Date: \_\_\_\_\_  
 Property Owner

X \_\_\_\_\_ Date: \_\_\_\_\_  
 Triple Crown





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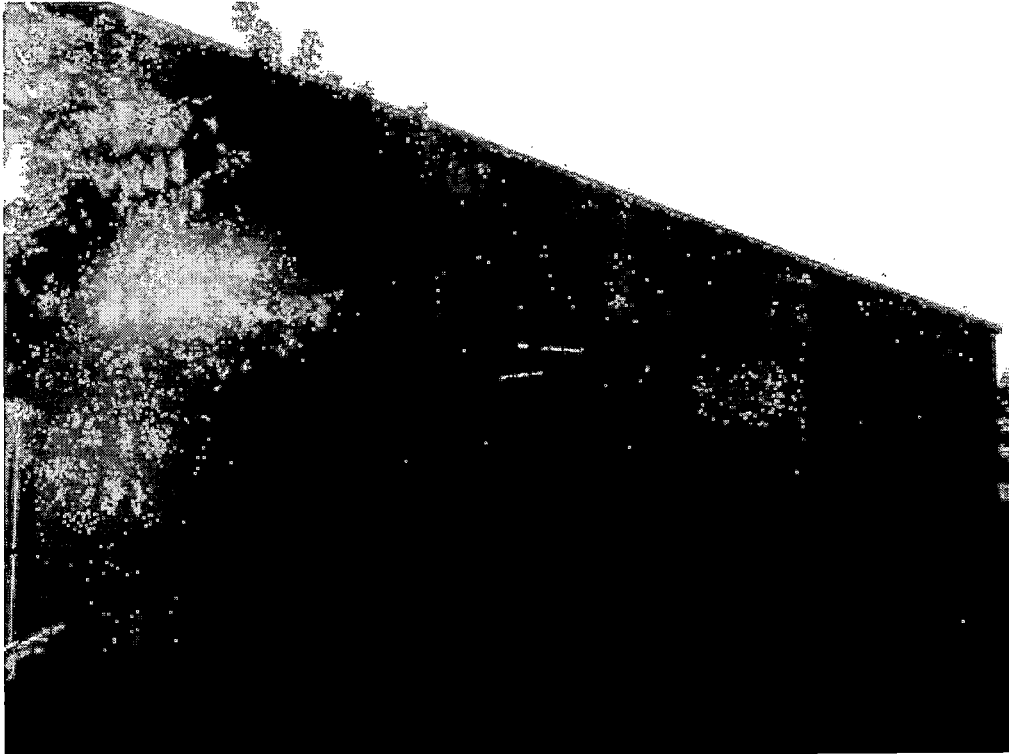




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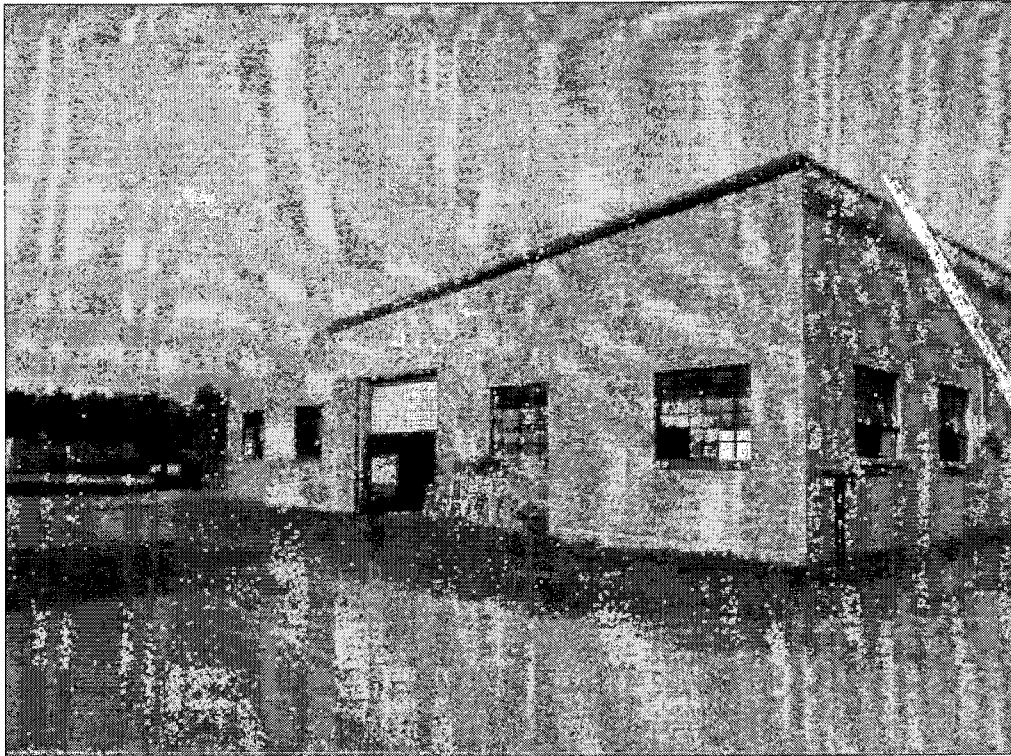




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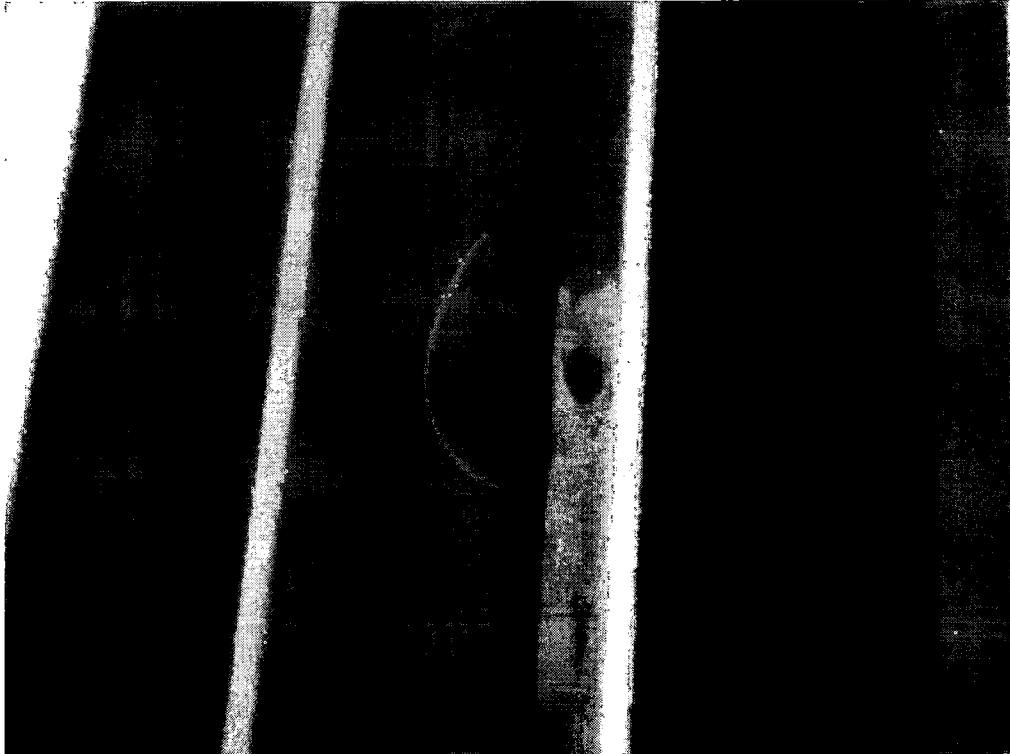




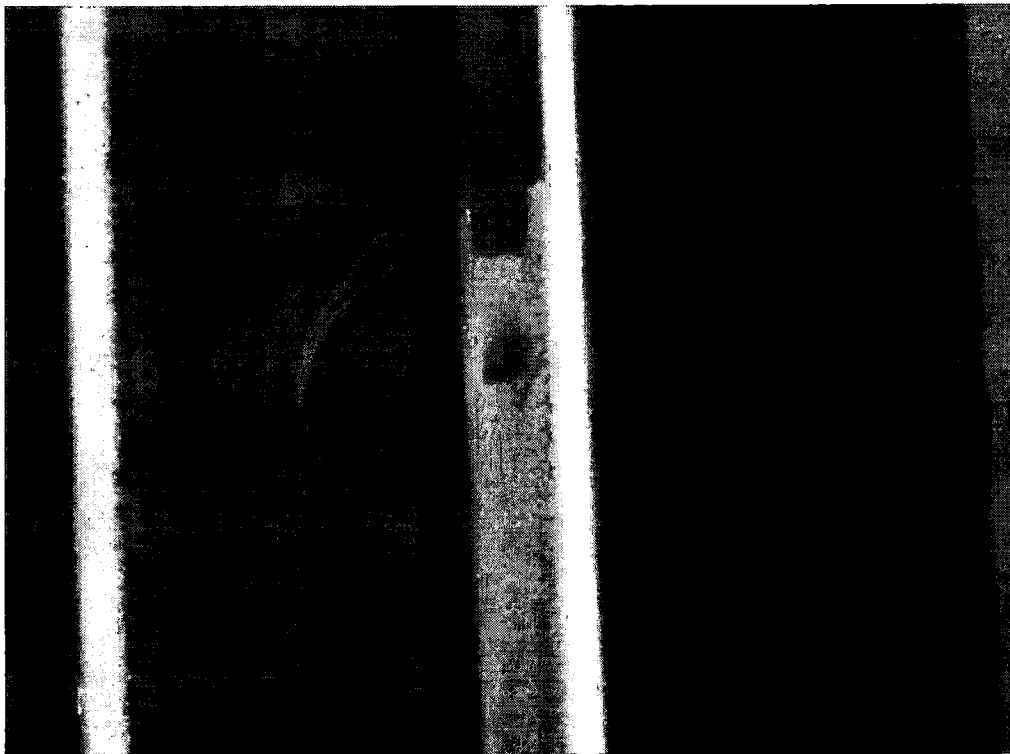
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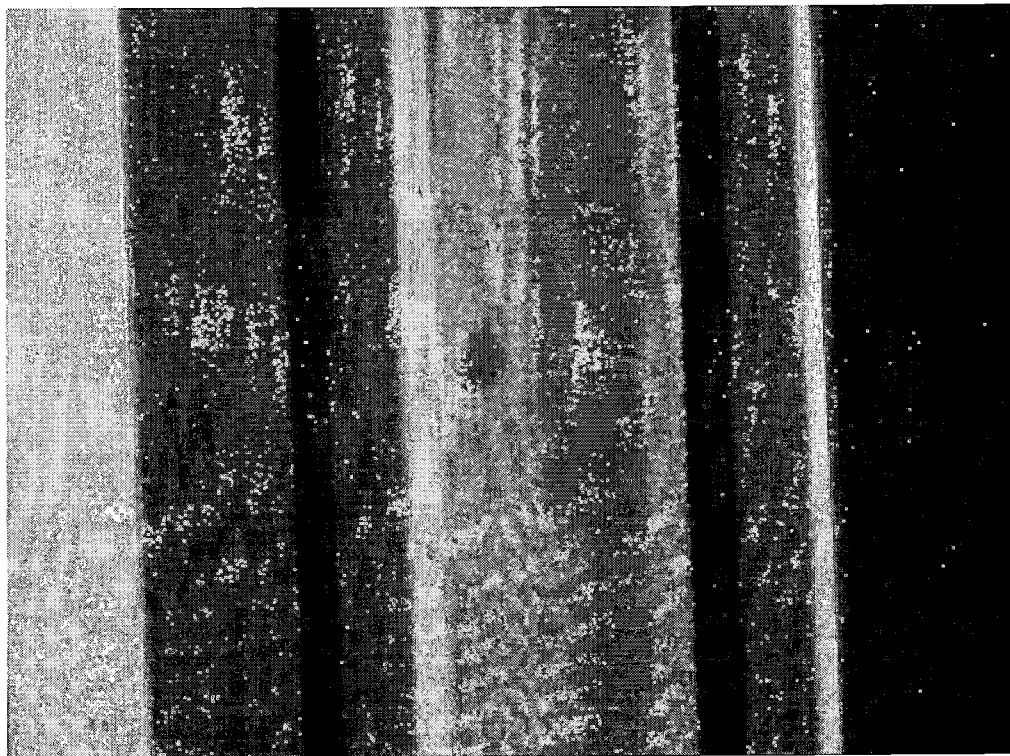
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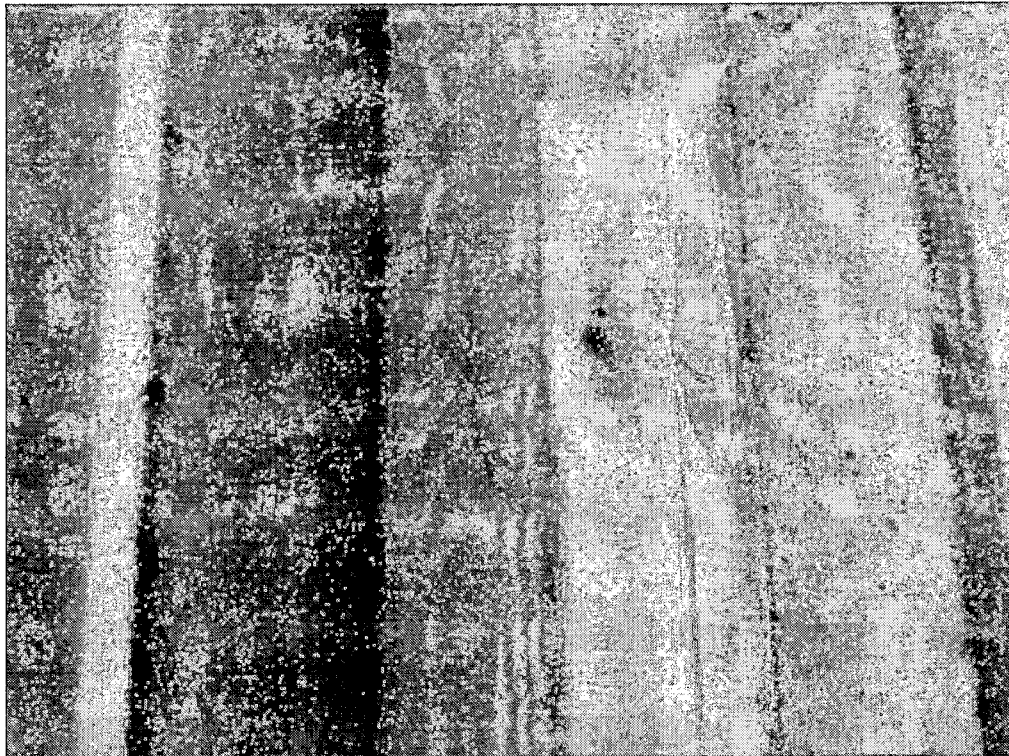




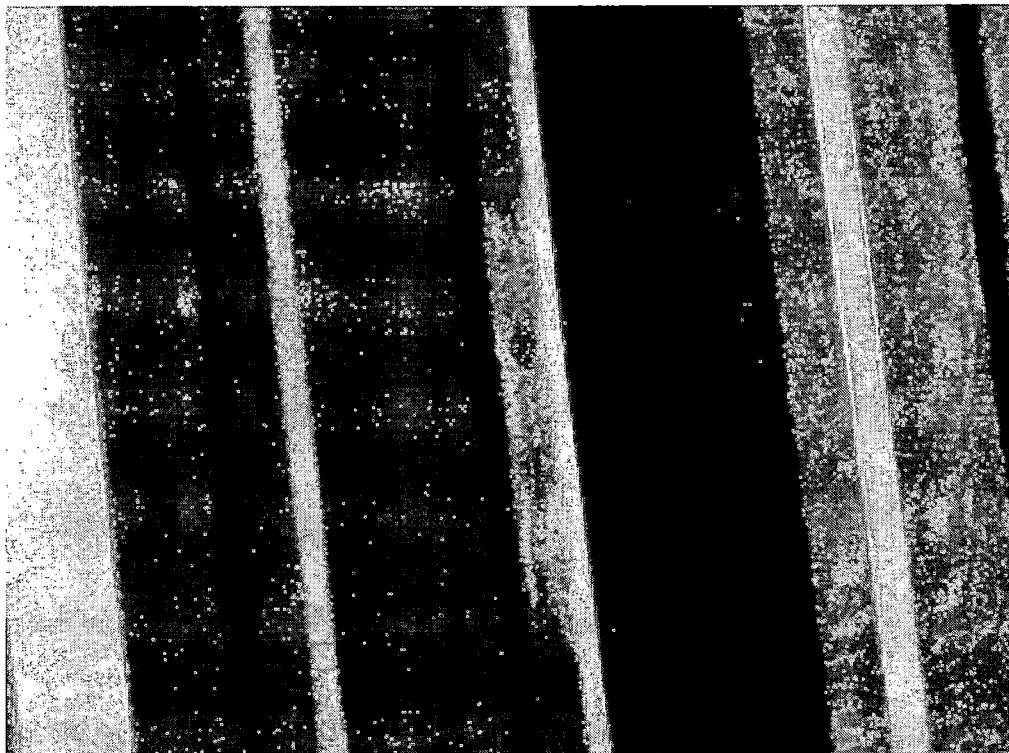
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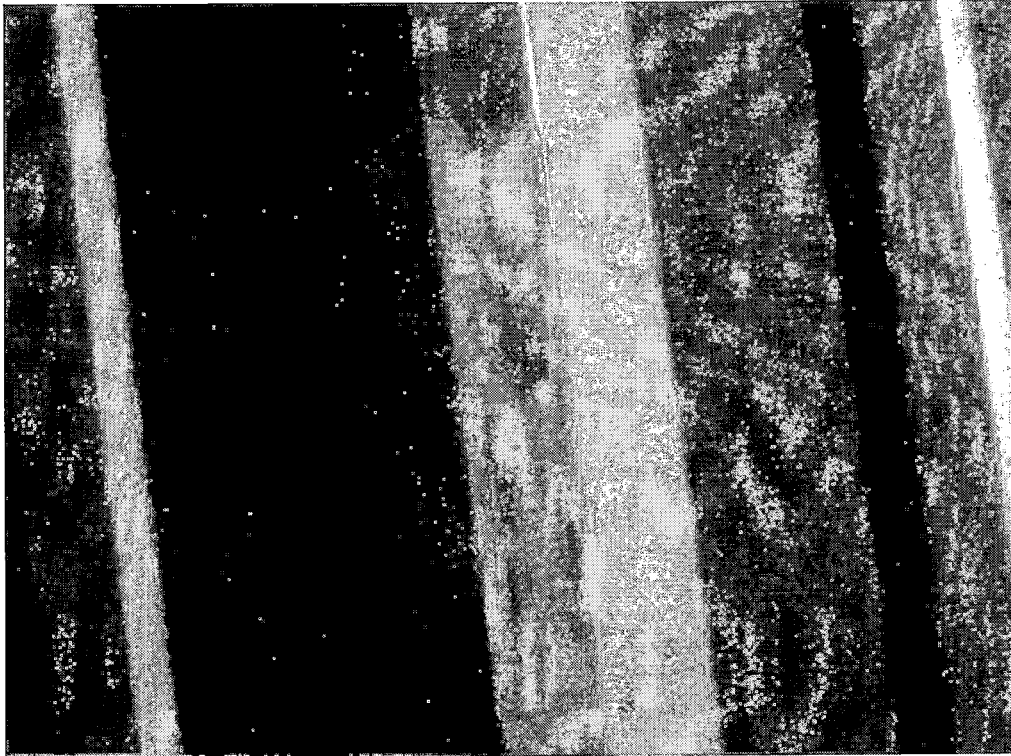




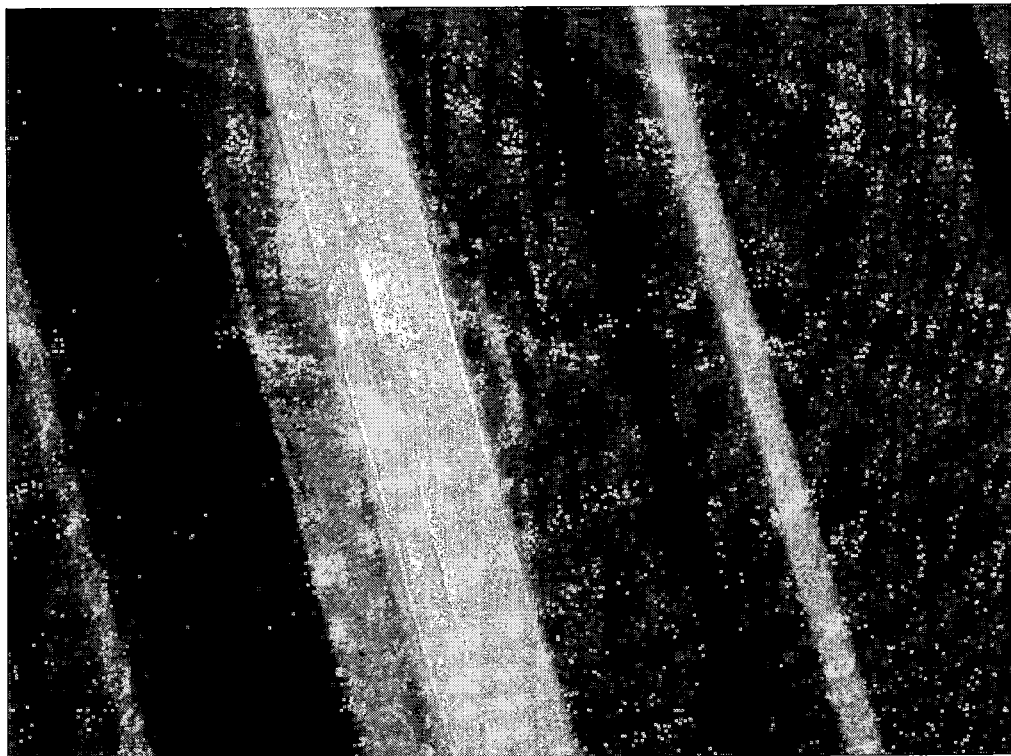
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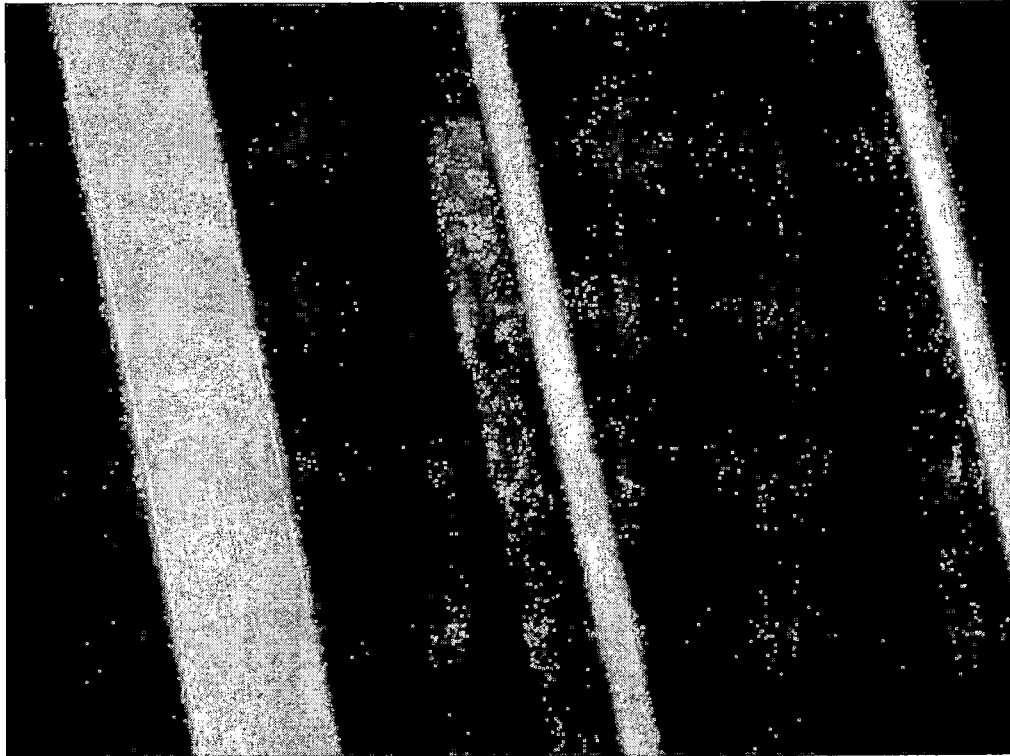




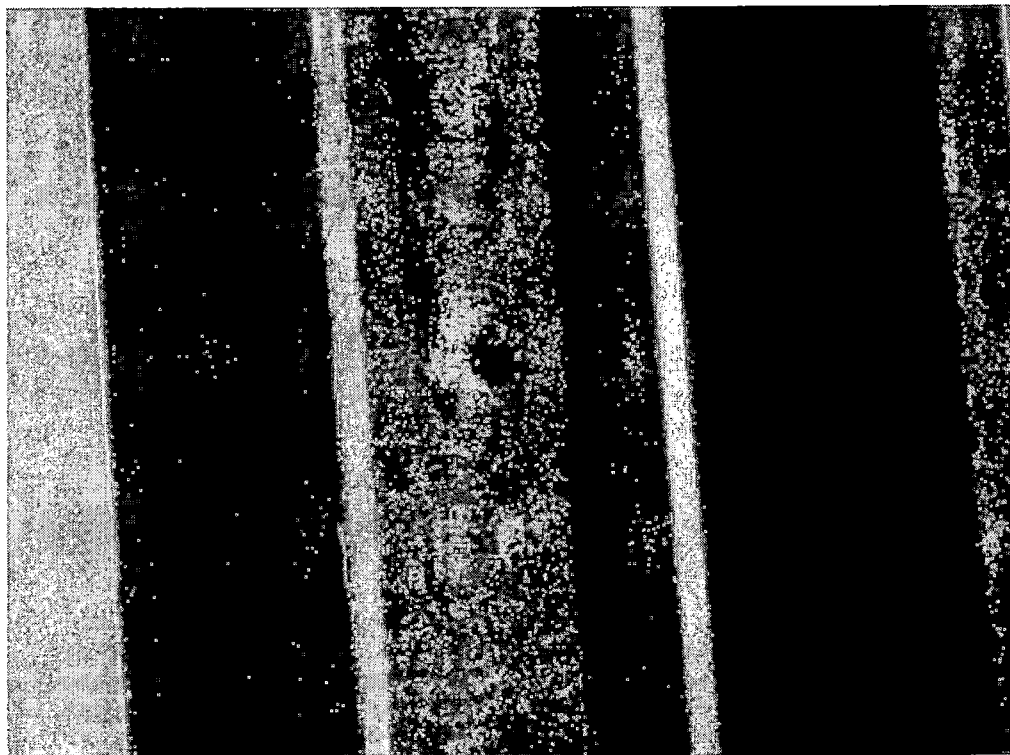
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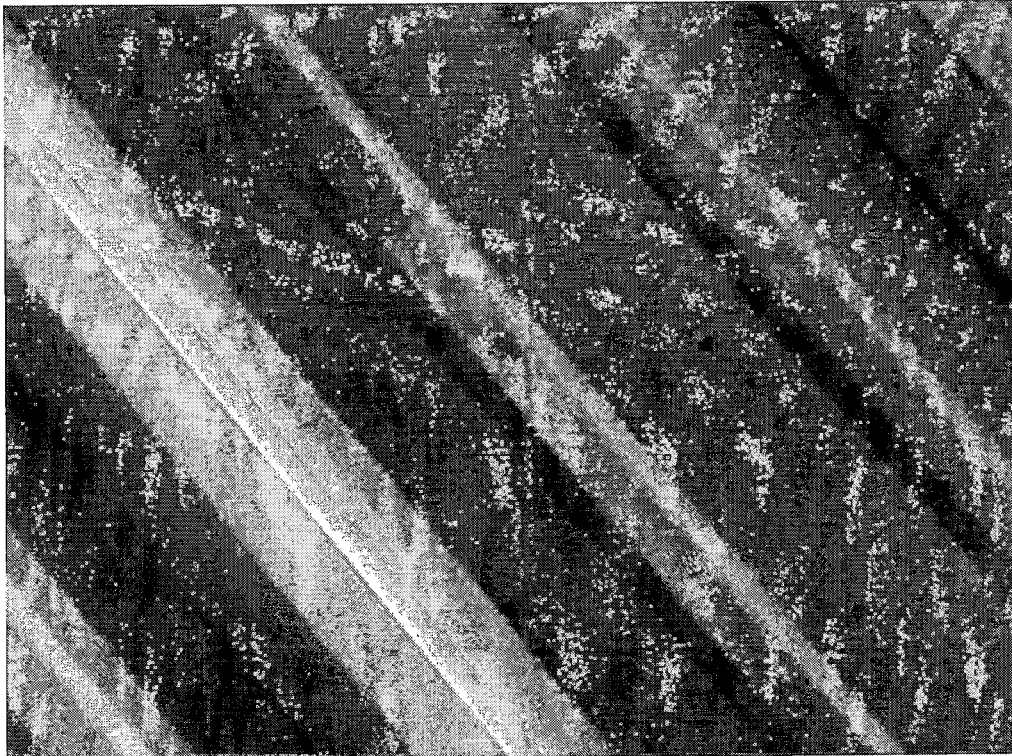




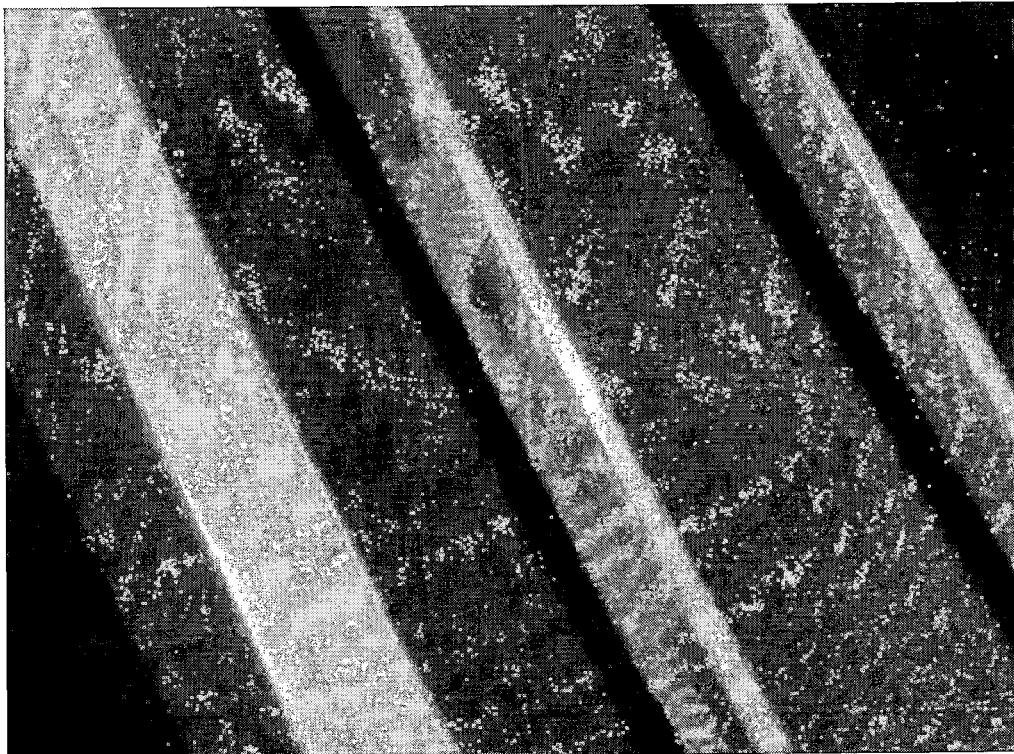
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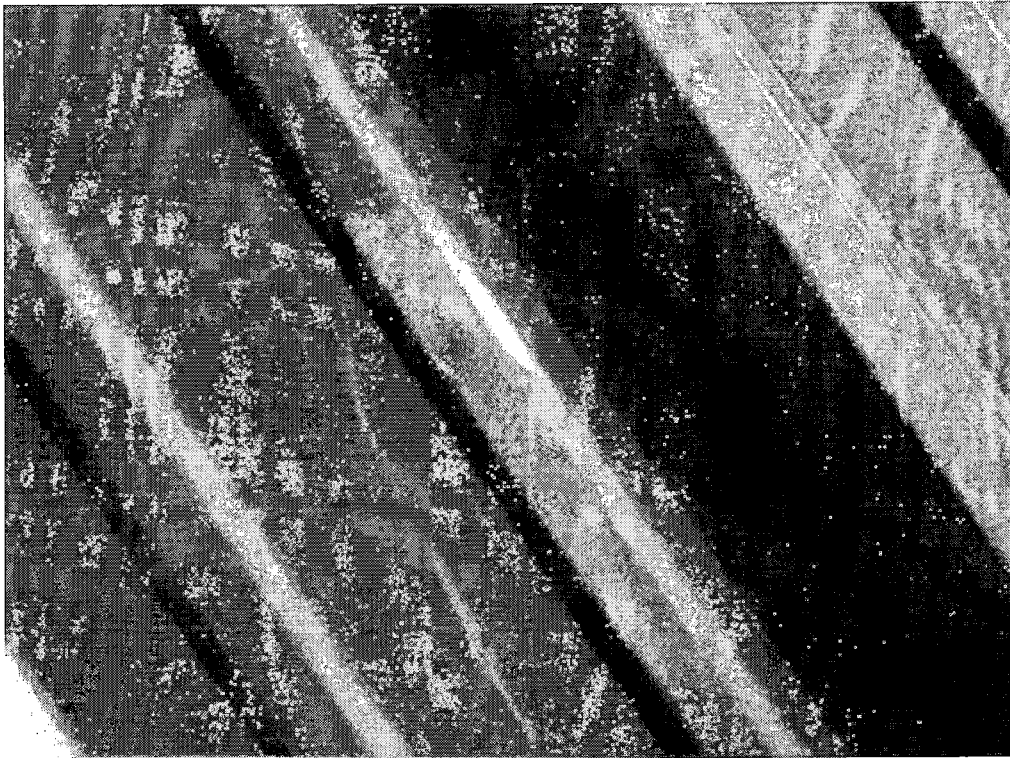




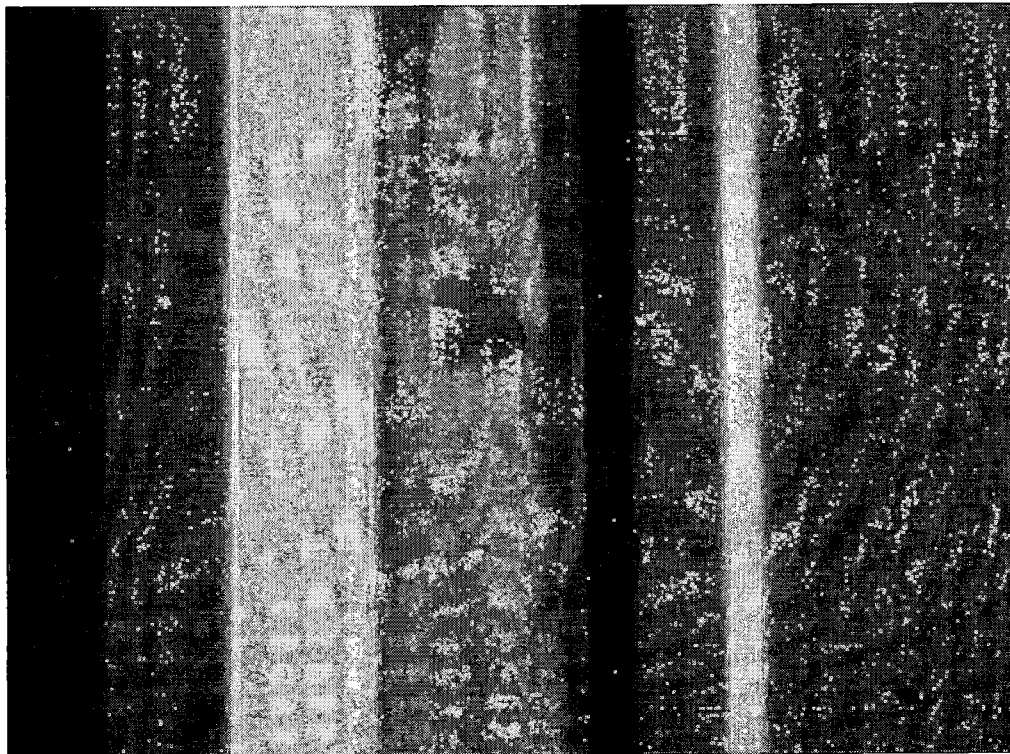
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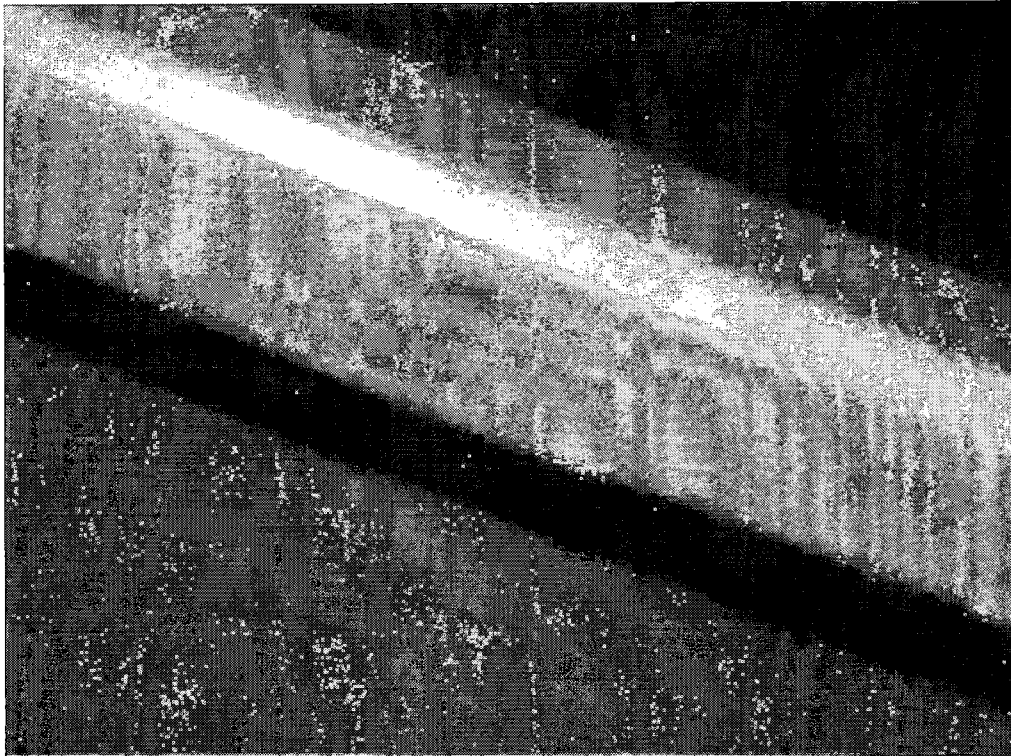




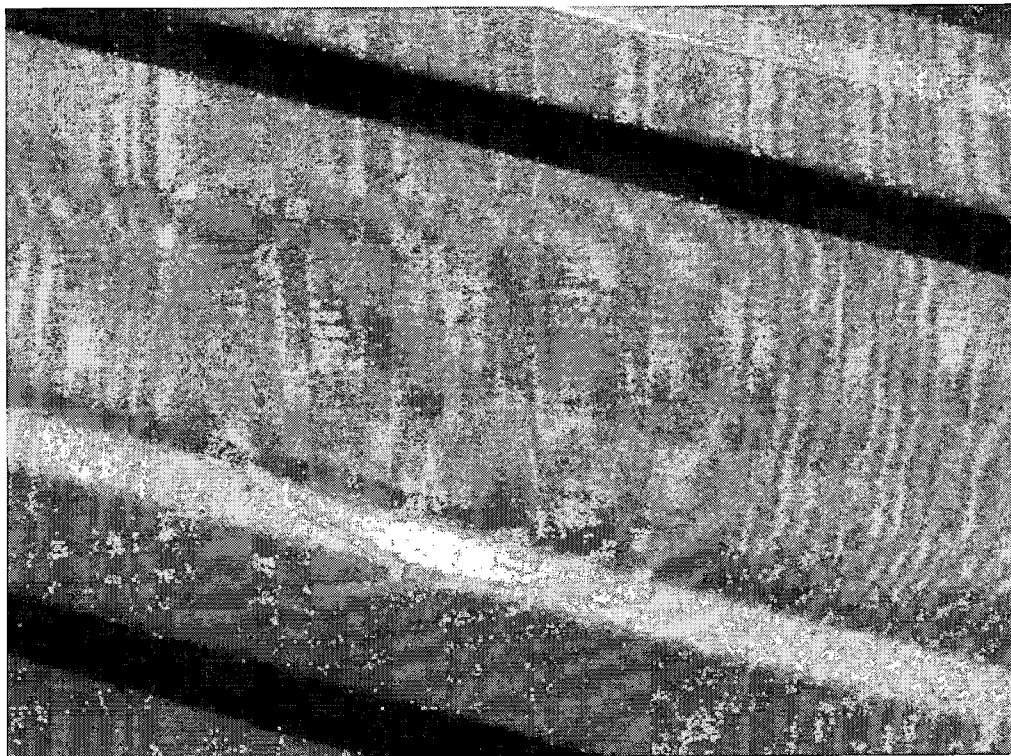
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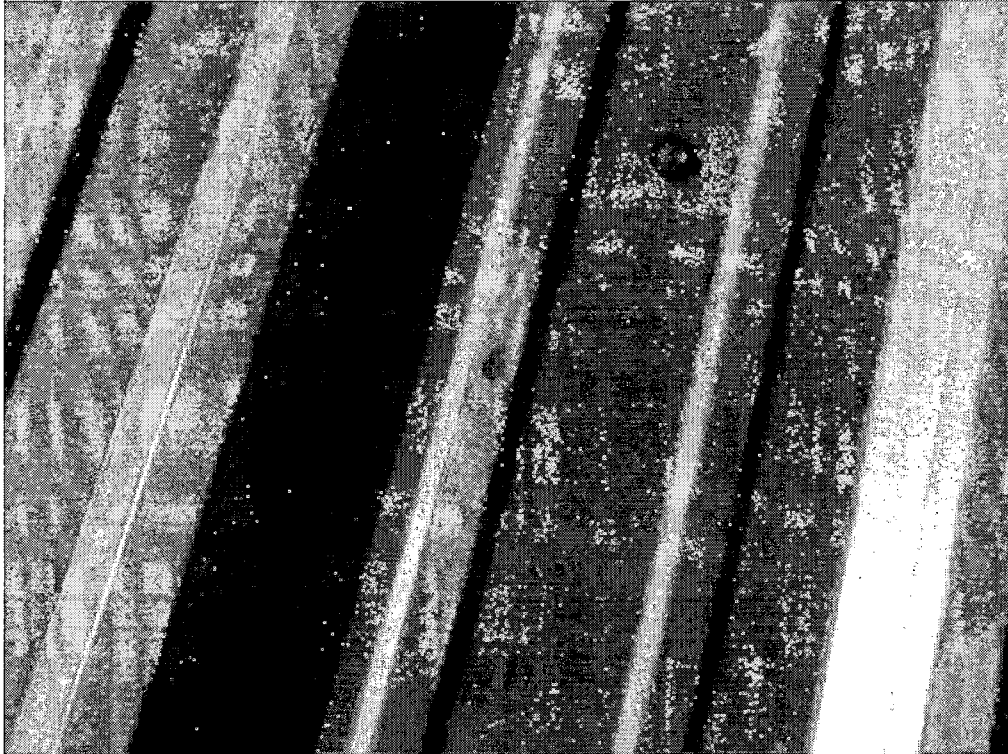




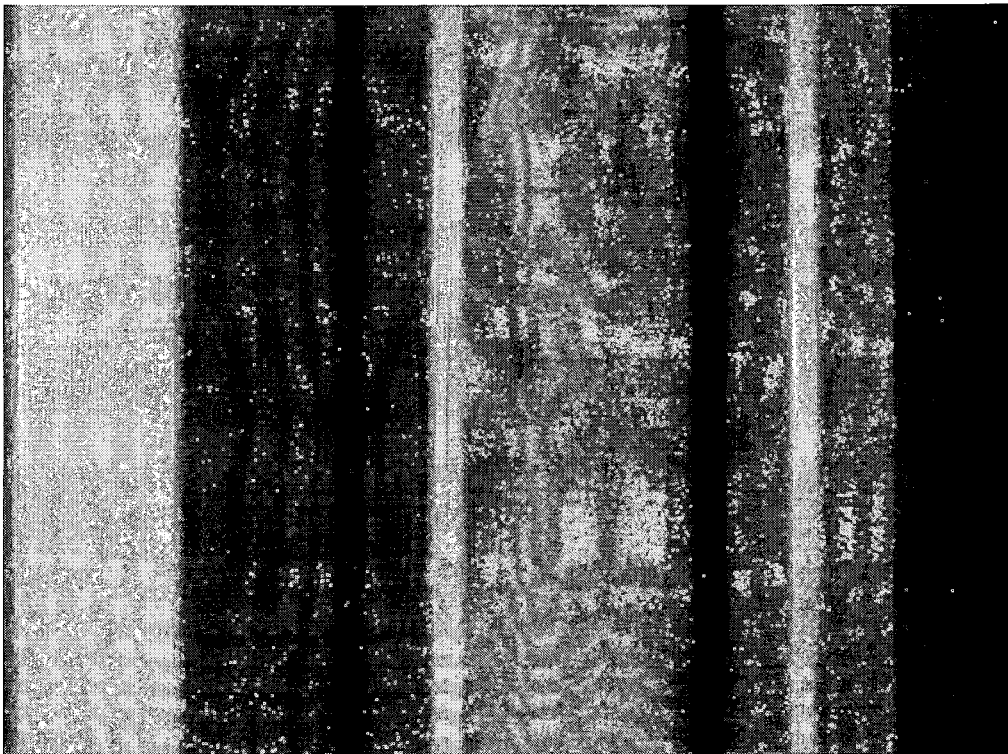
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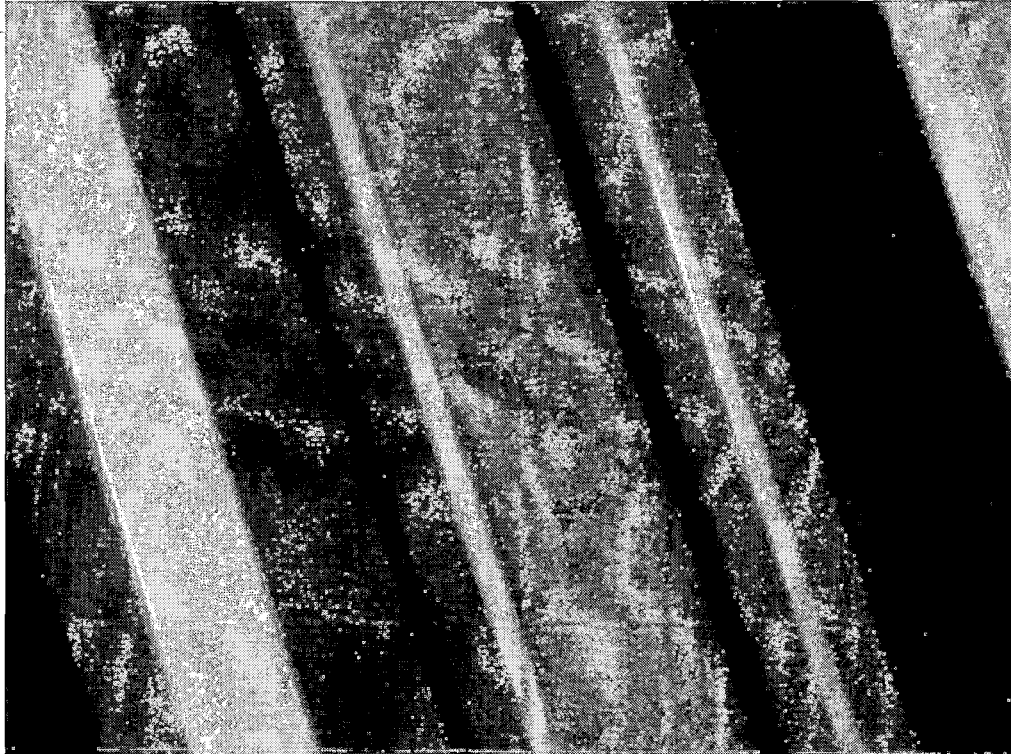




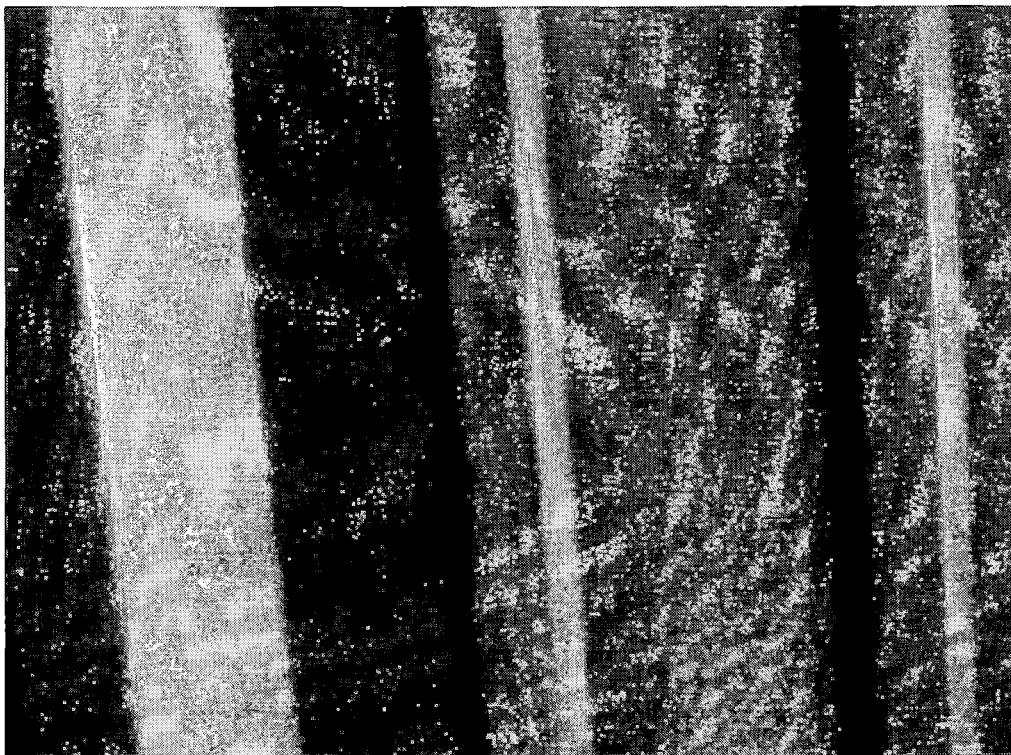
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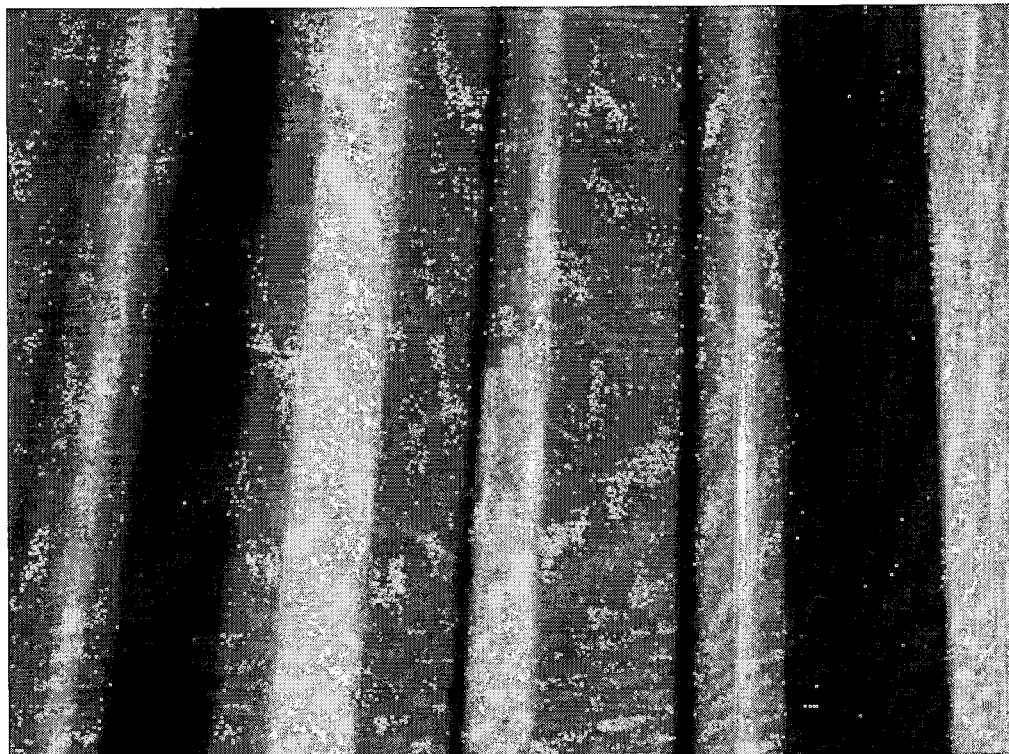
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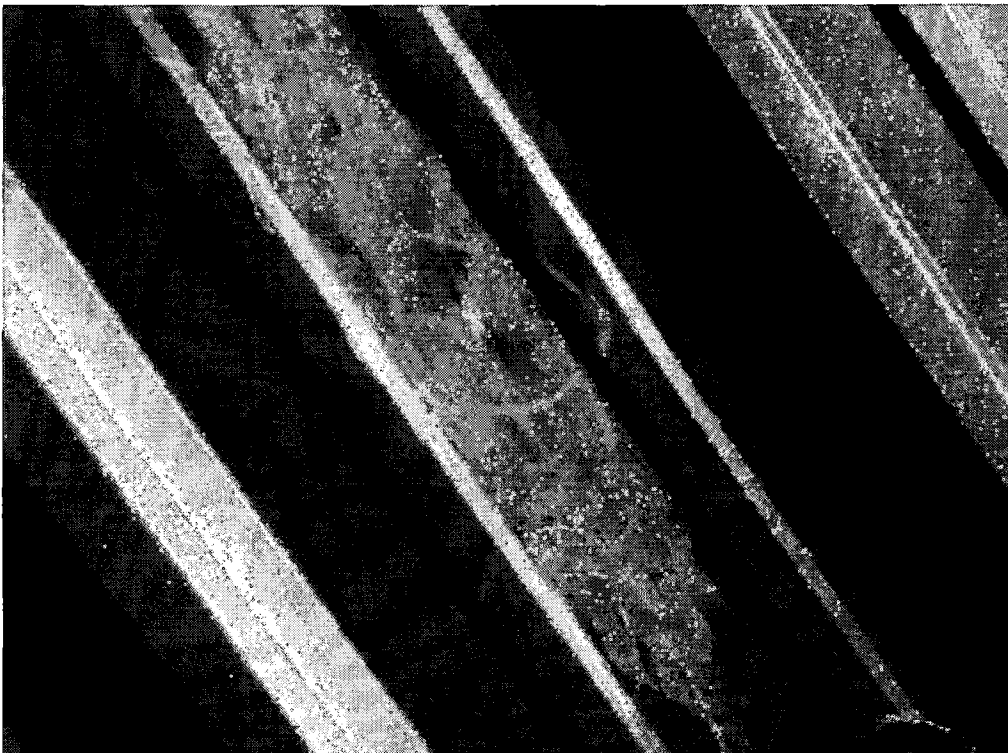
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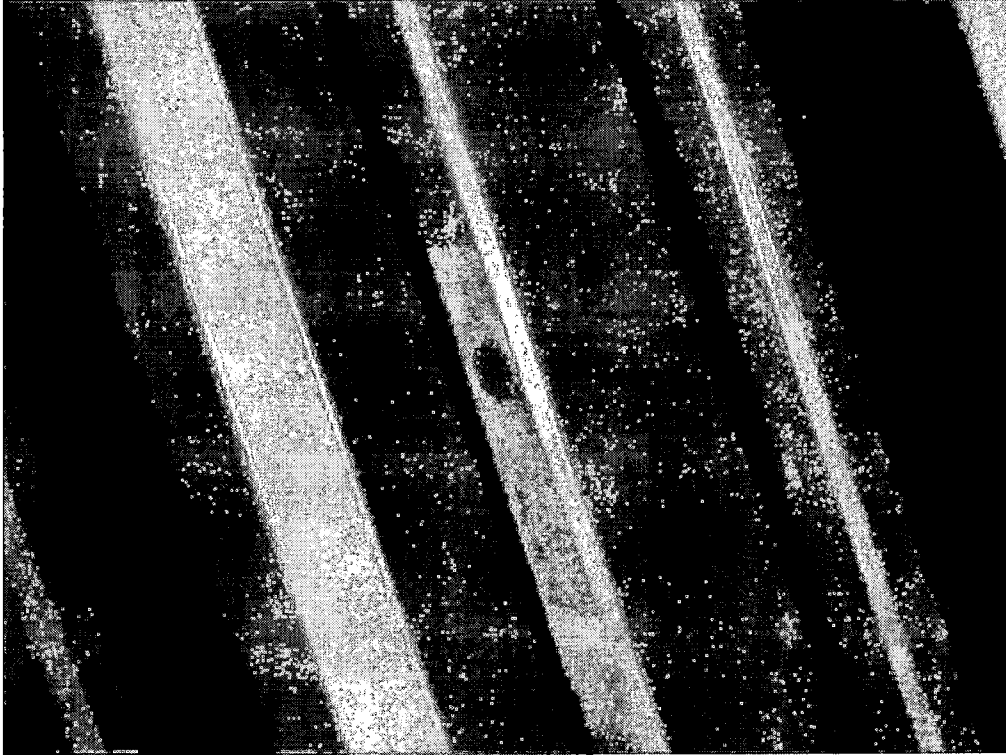




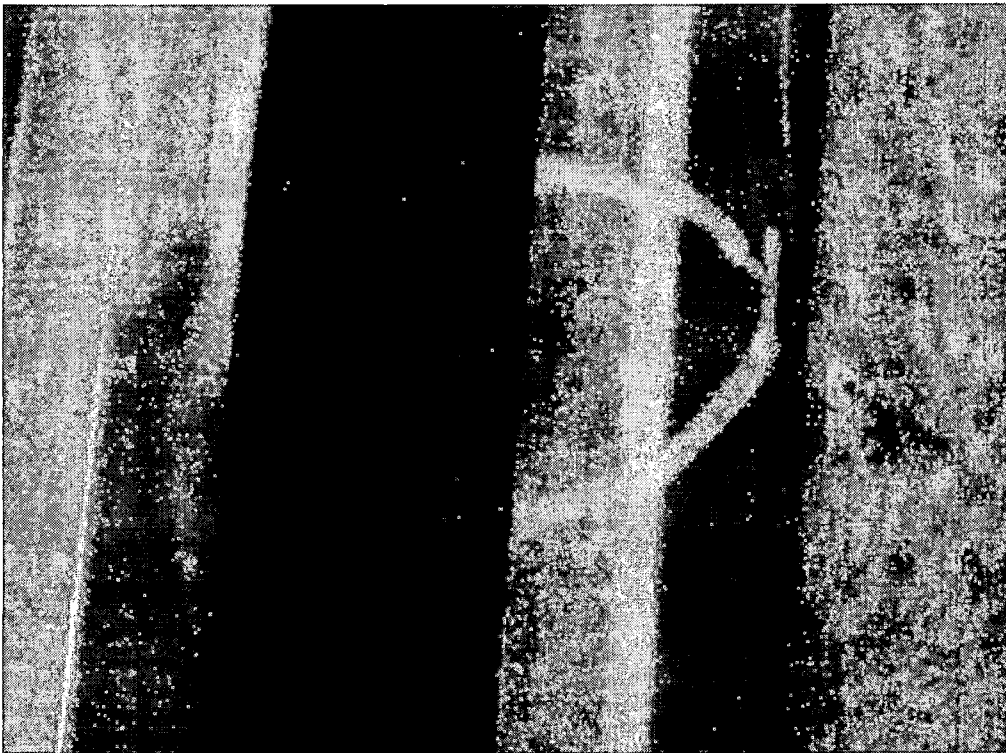
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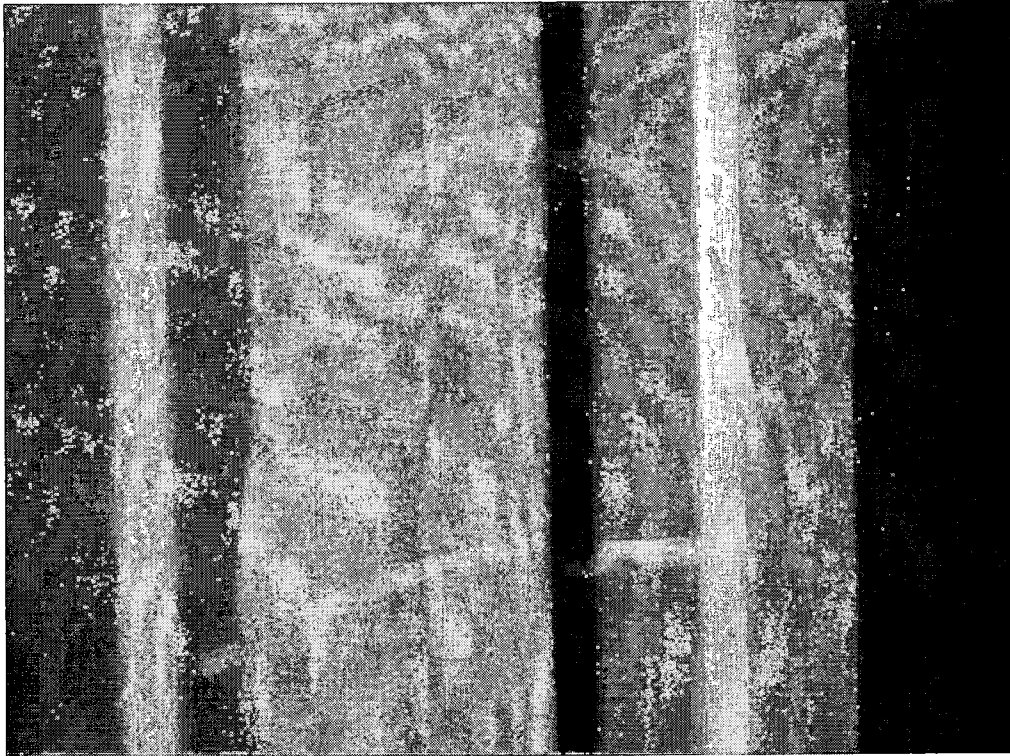




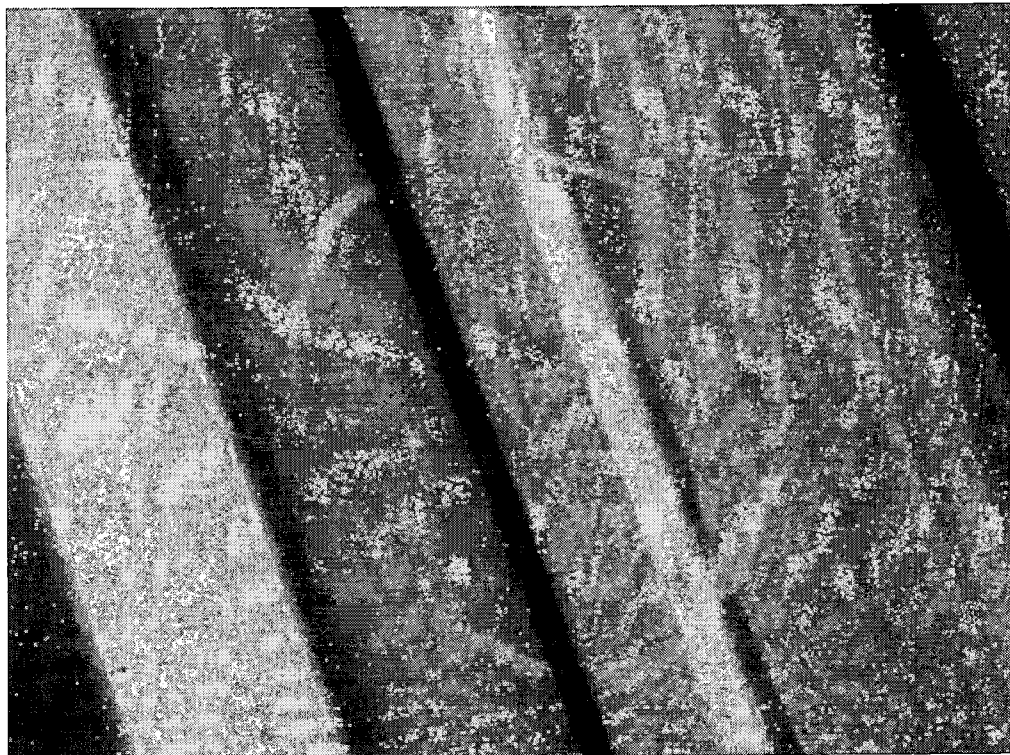
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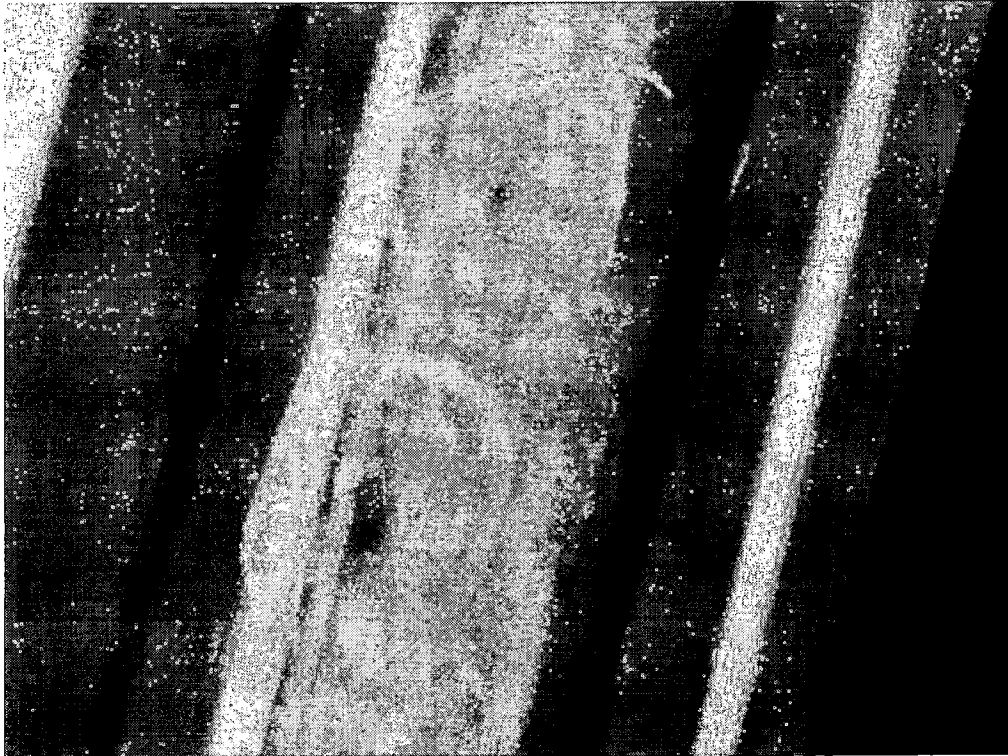




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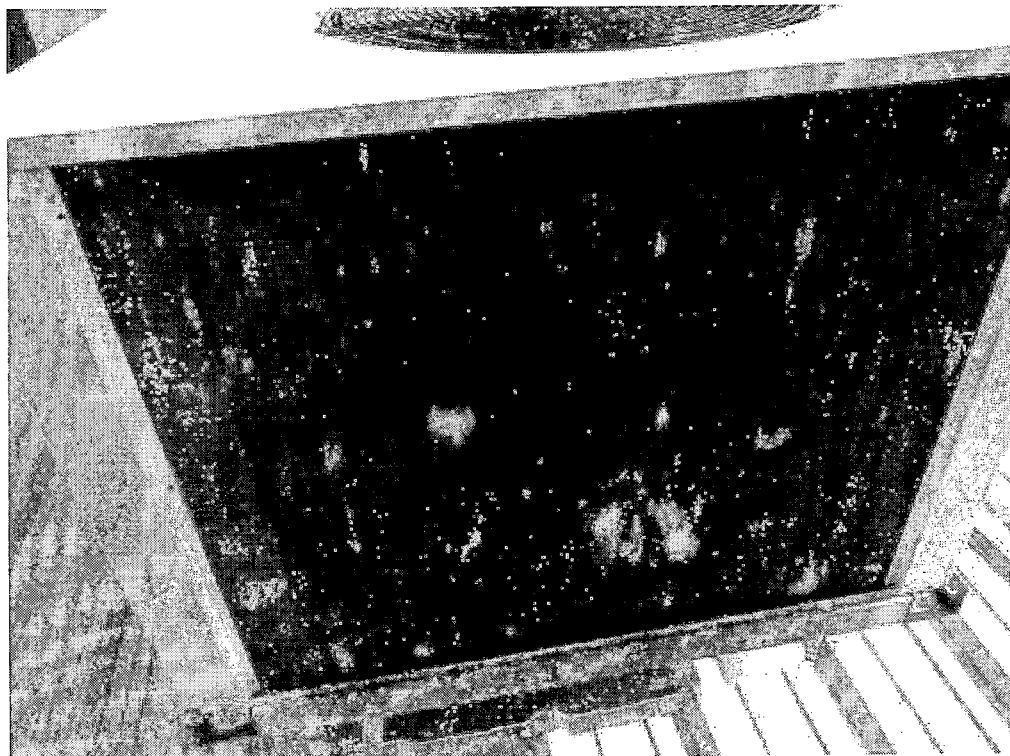
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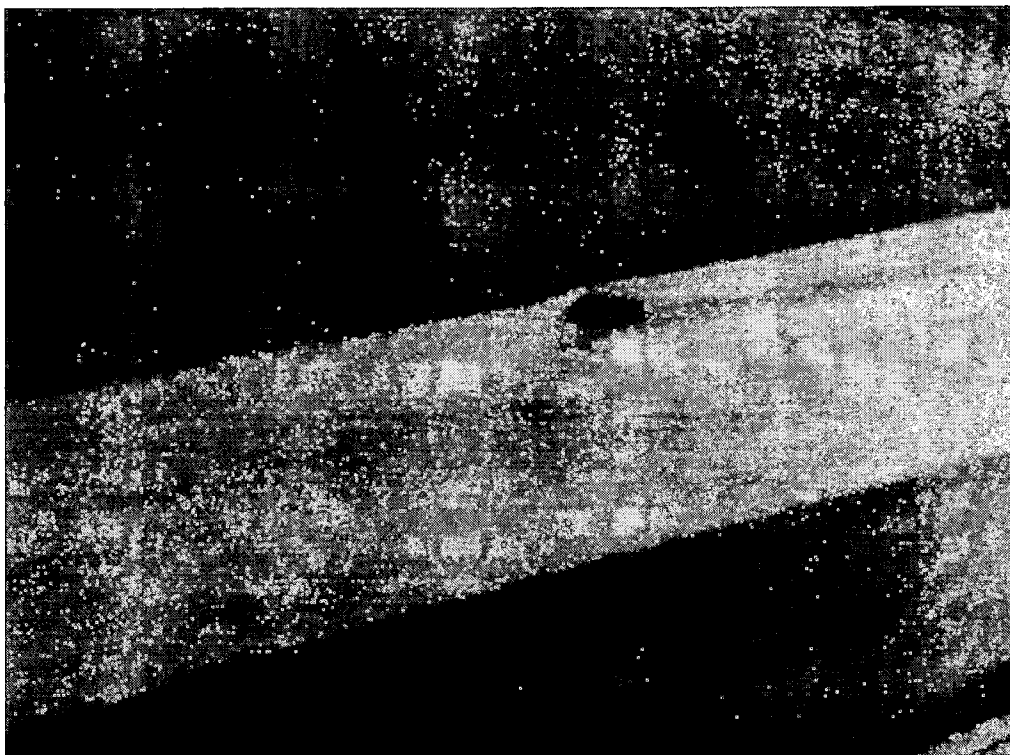
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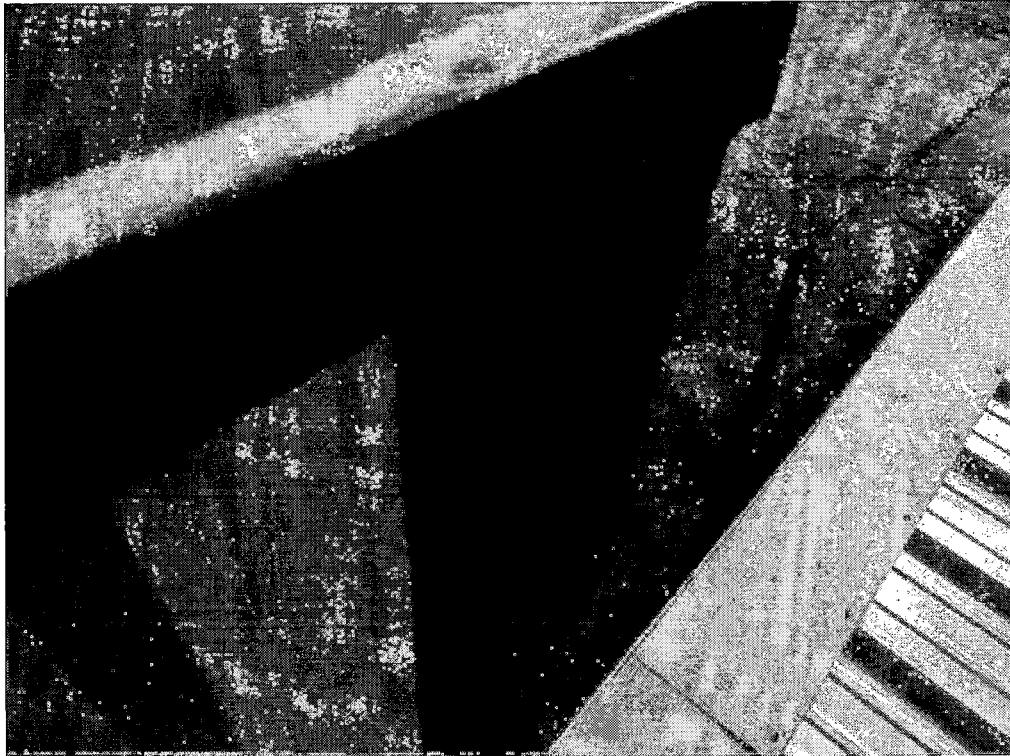




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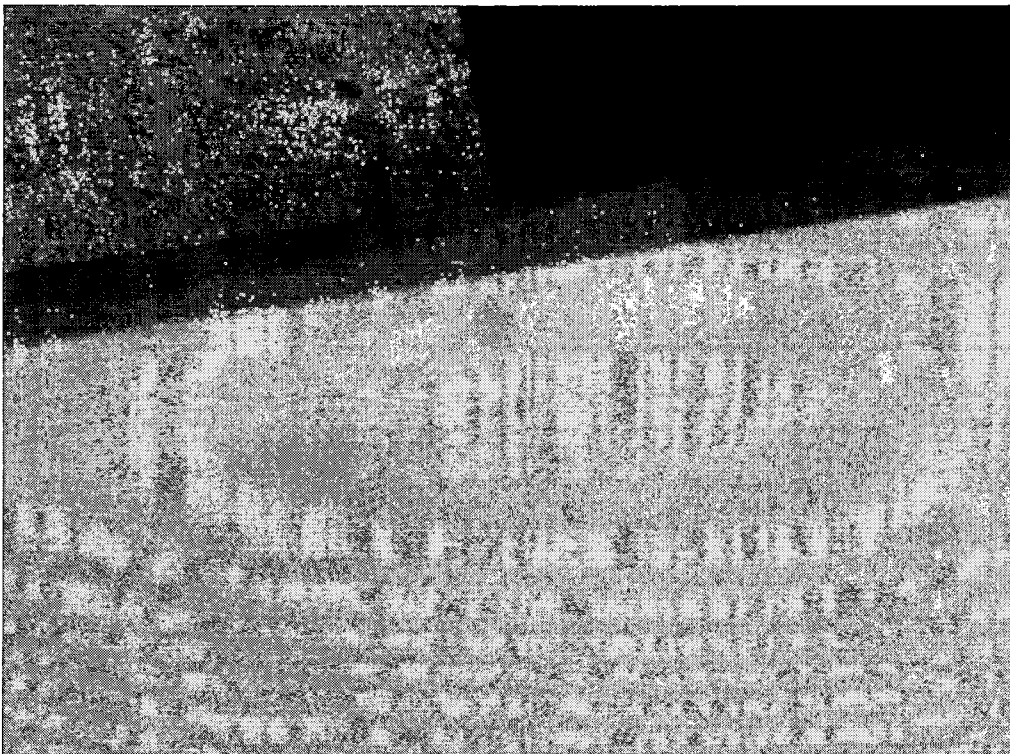
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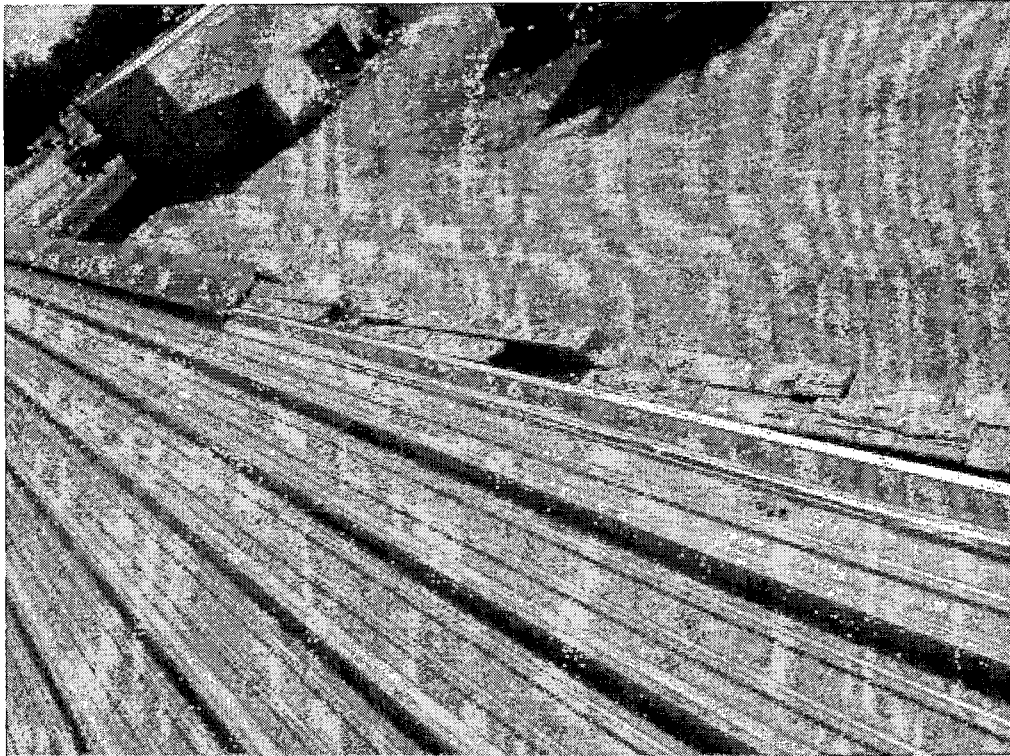




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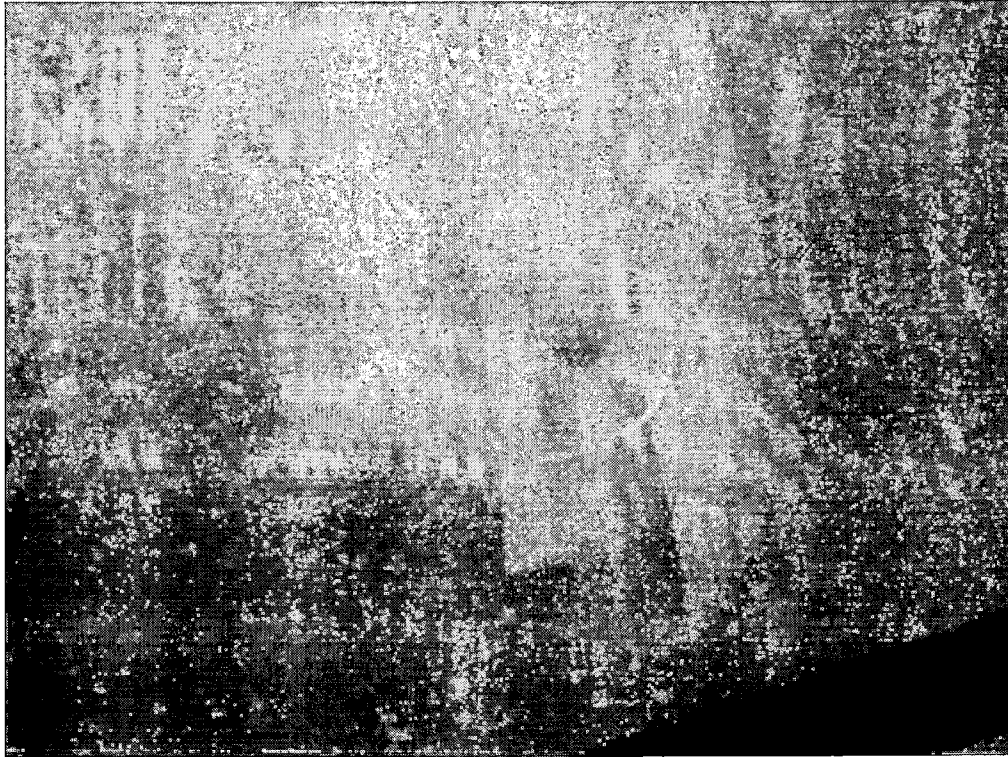




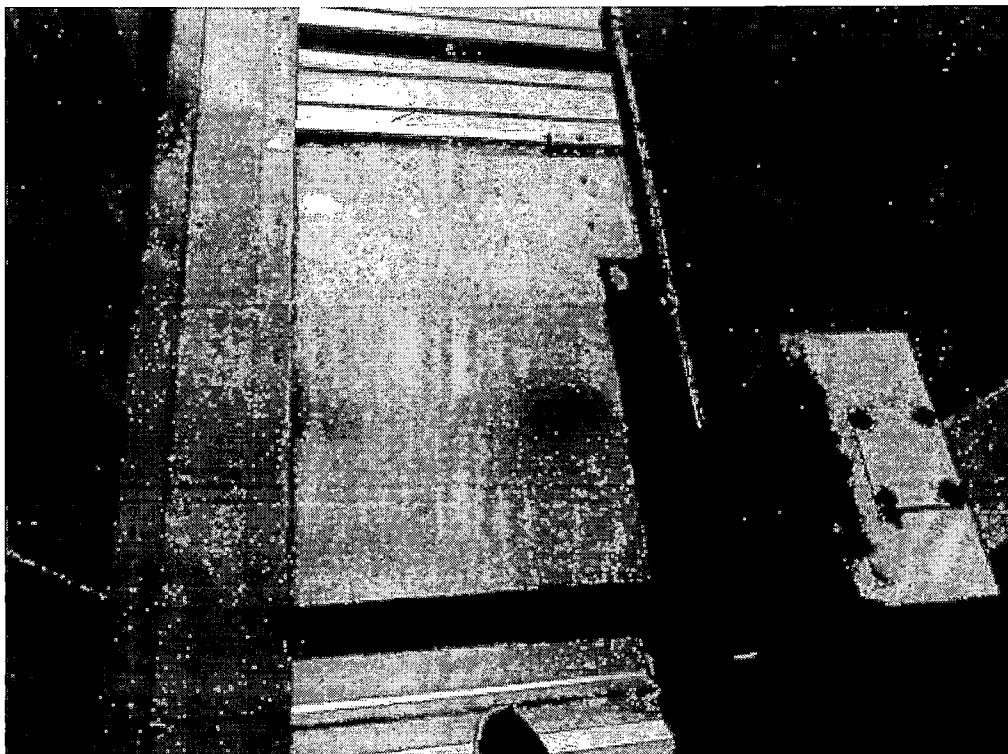
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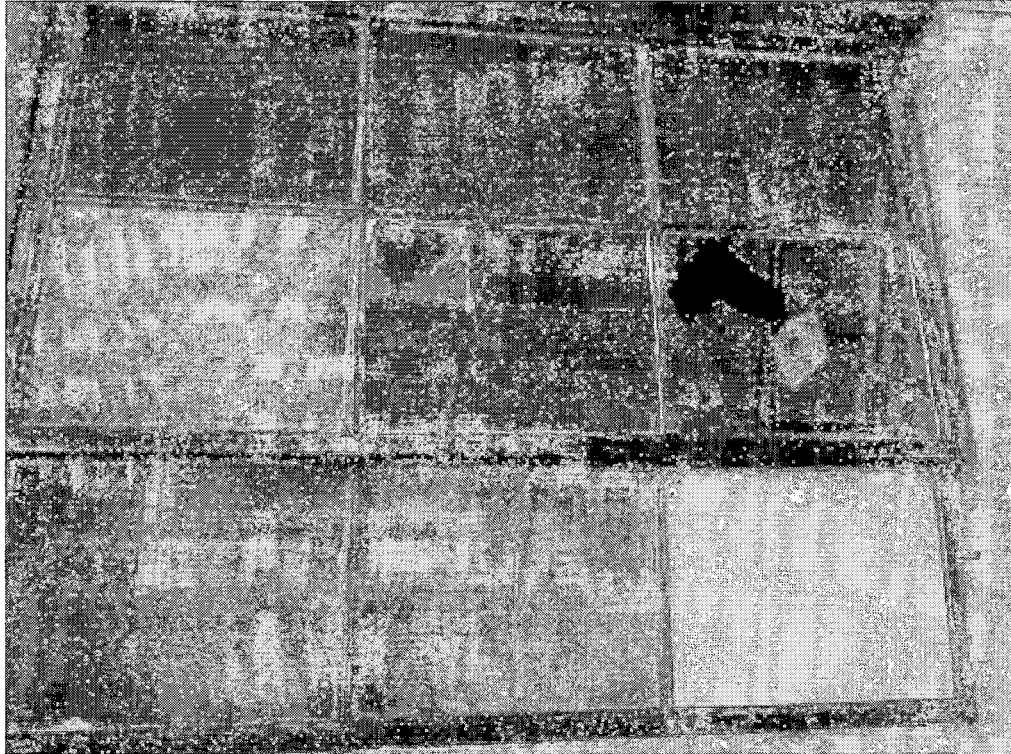




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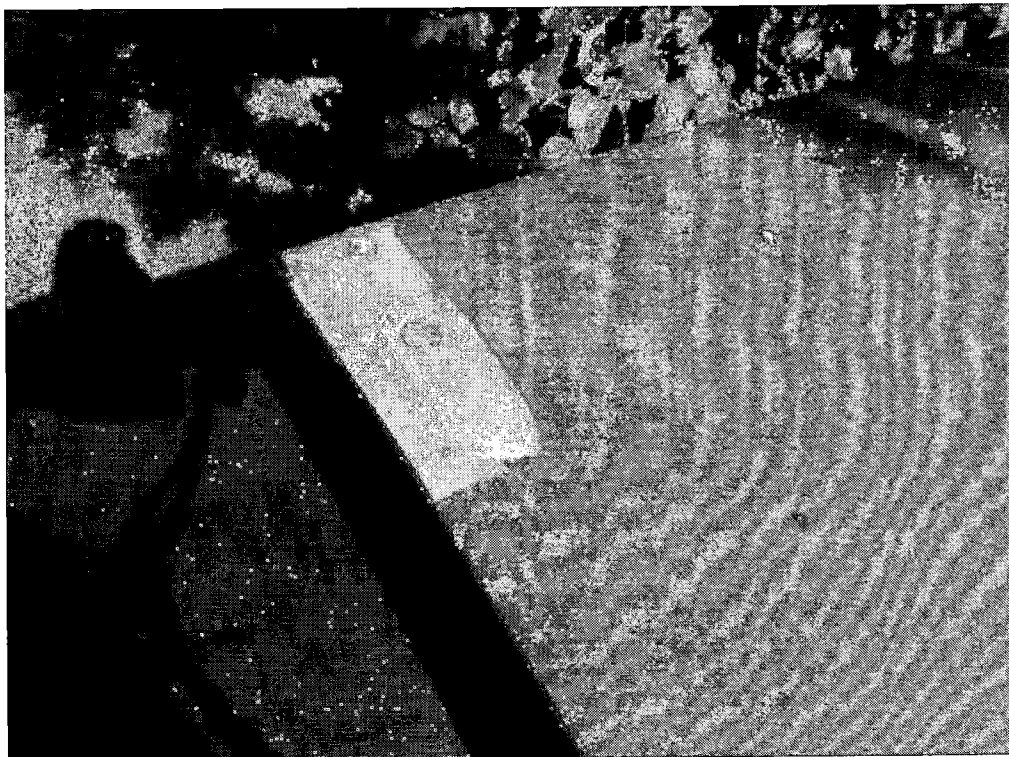
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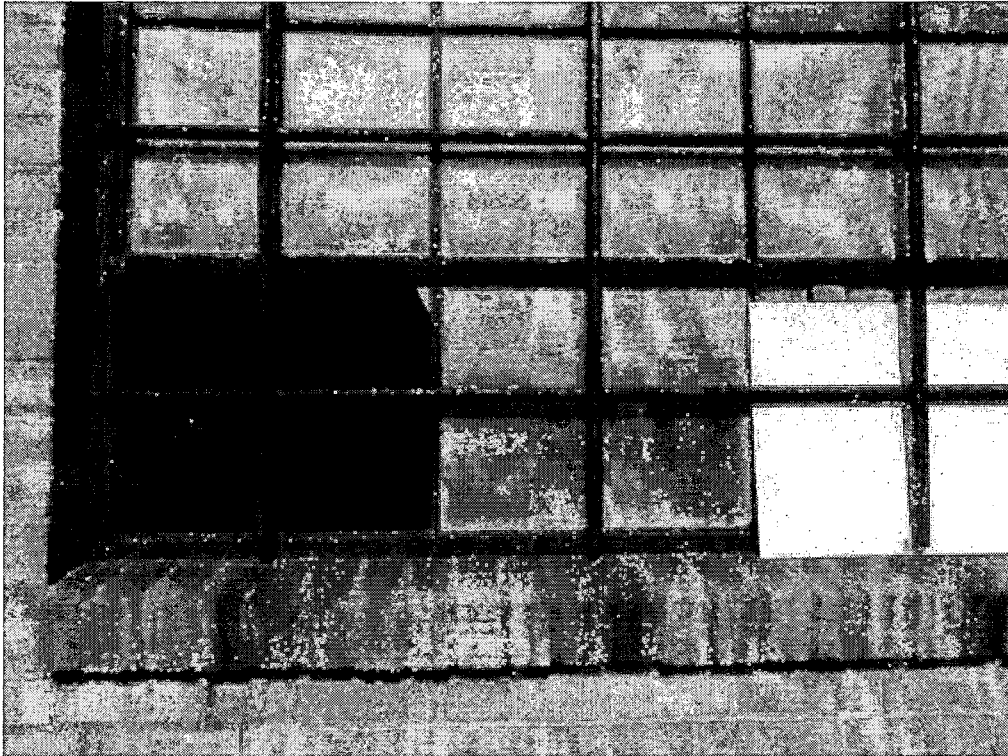




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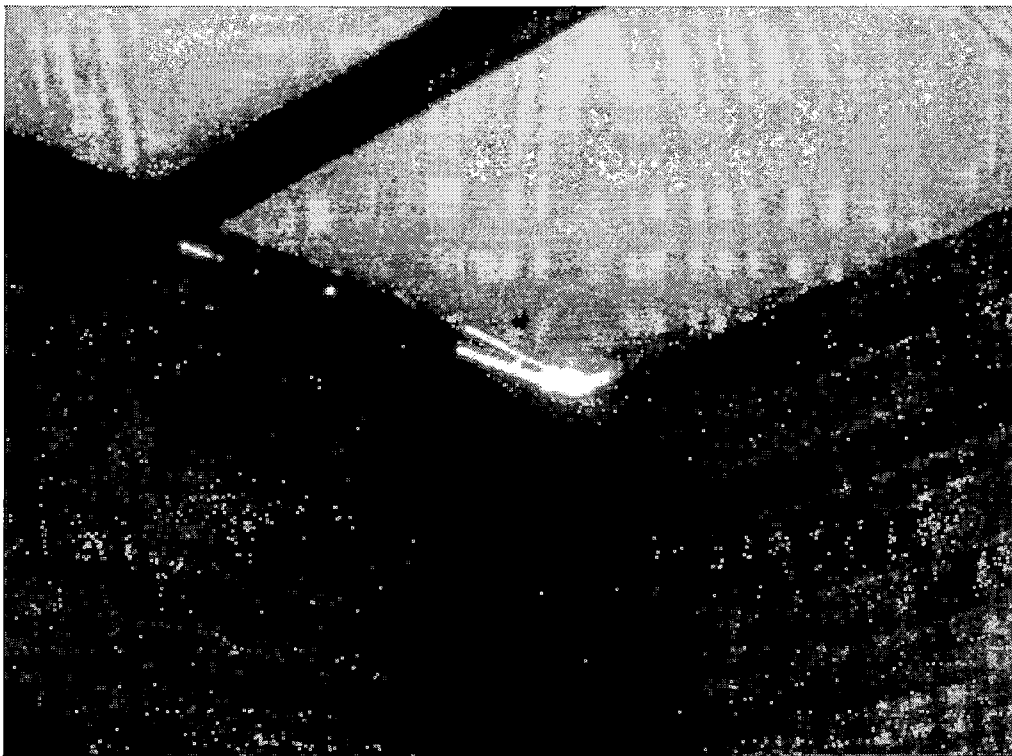
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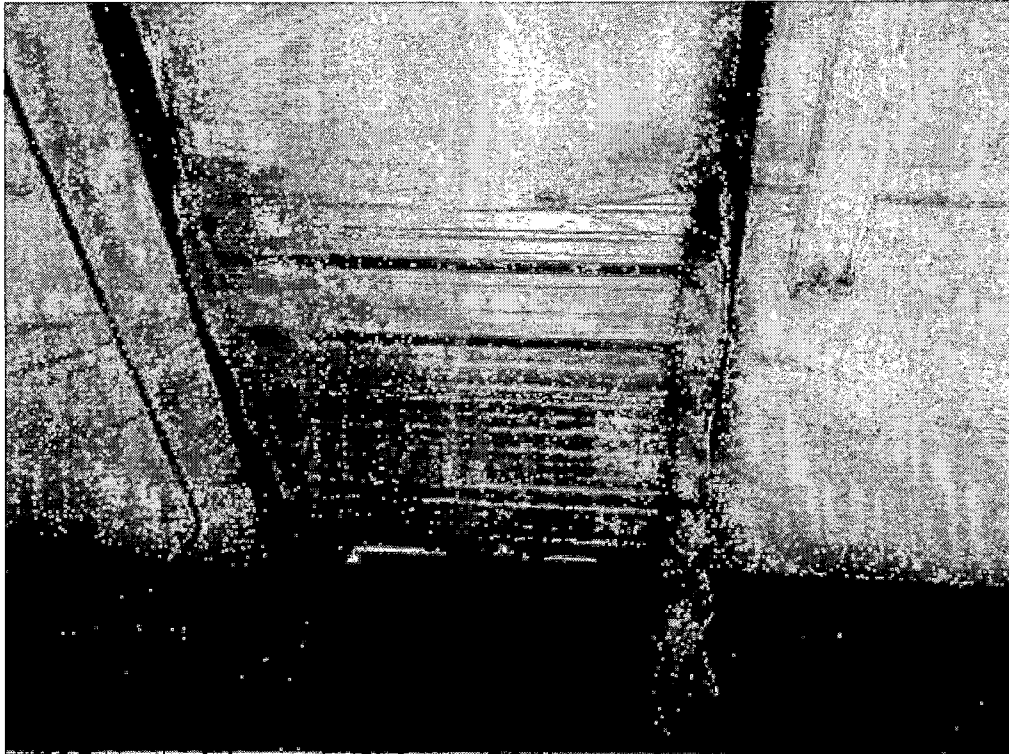




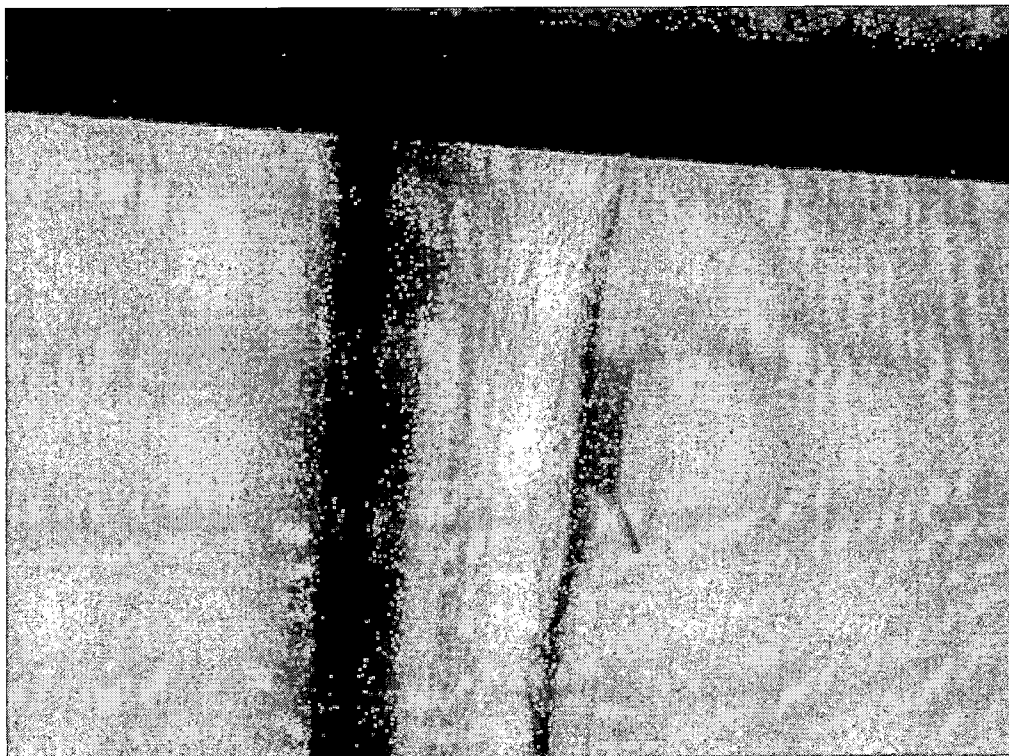
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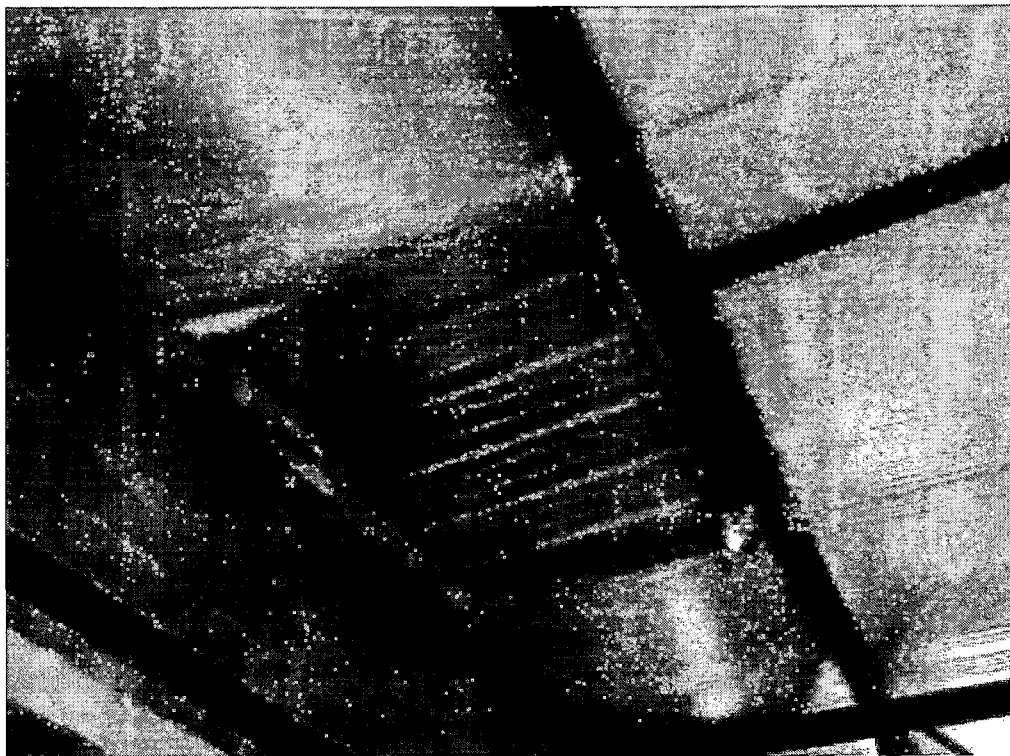
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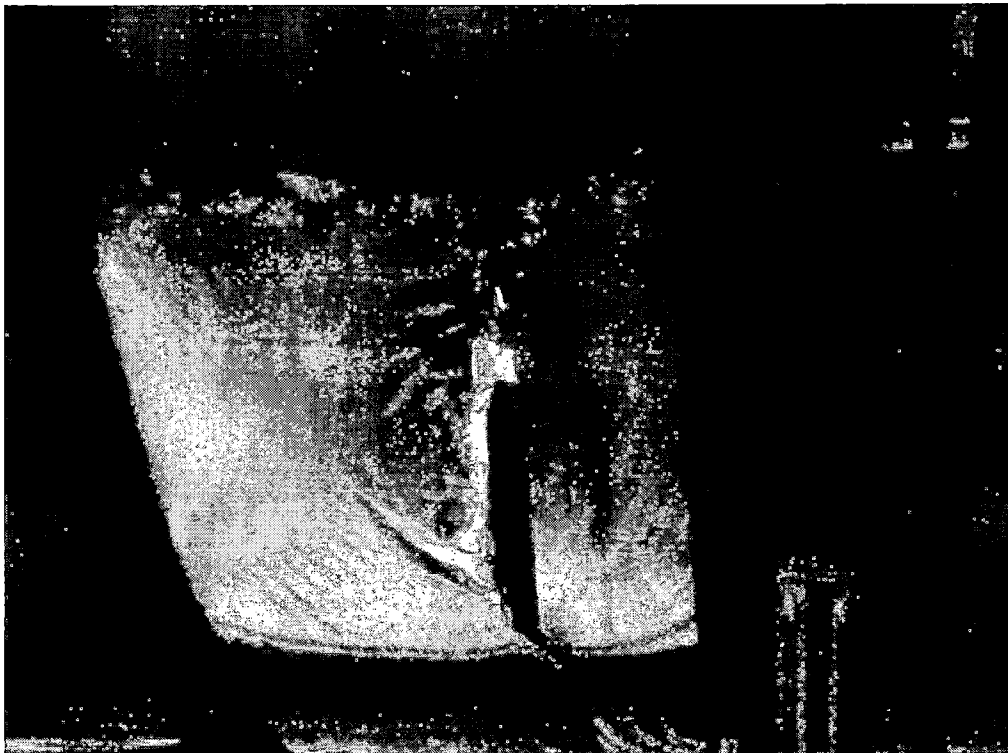
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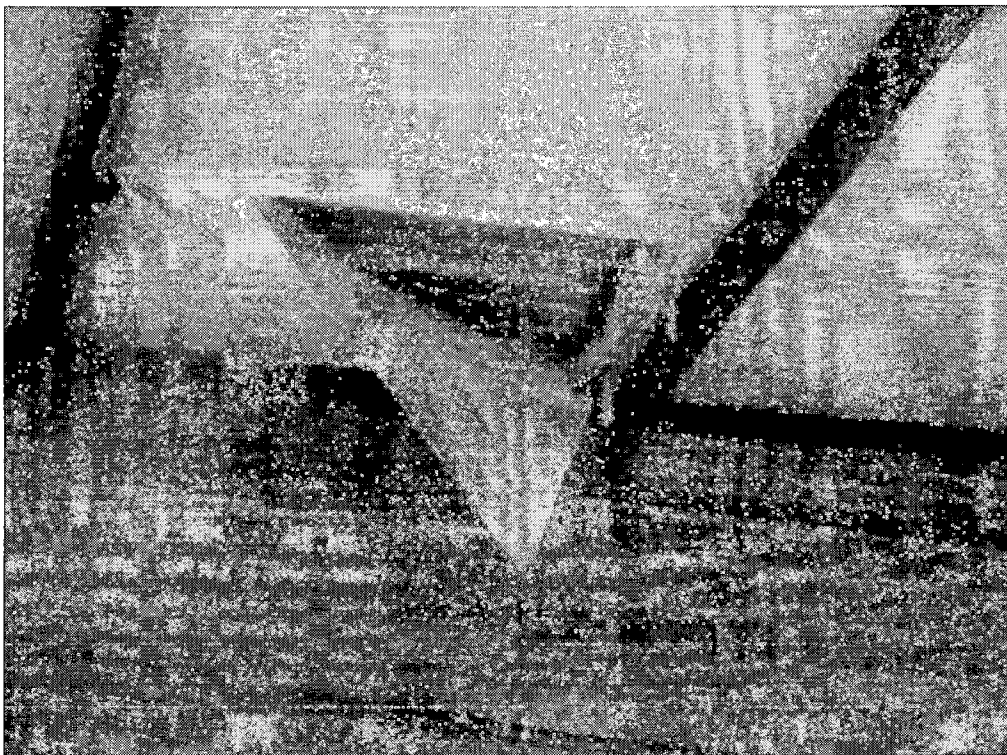
**Triple Crown Roofing & Construction, Inc.**

Triple Crown Roofing & Construction, Inc.  
1317 W. Industrial Dr.  
Sulphur Springs, Tx 75482  
Tax Id: 9073023  
RCAT License# 03-0287

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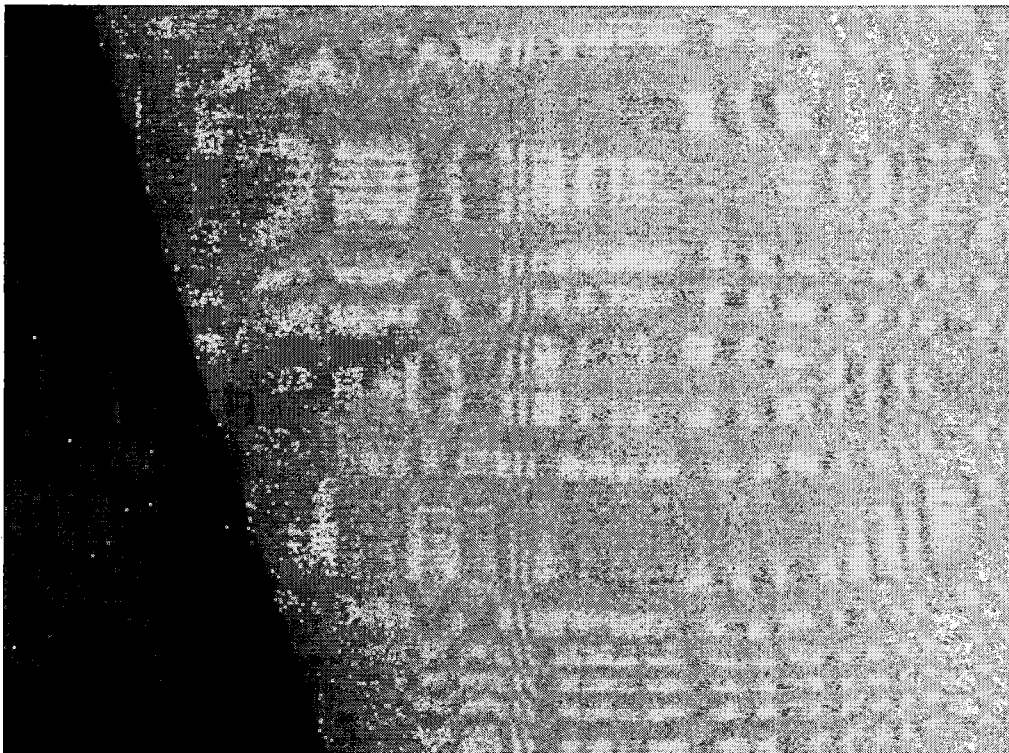
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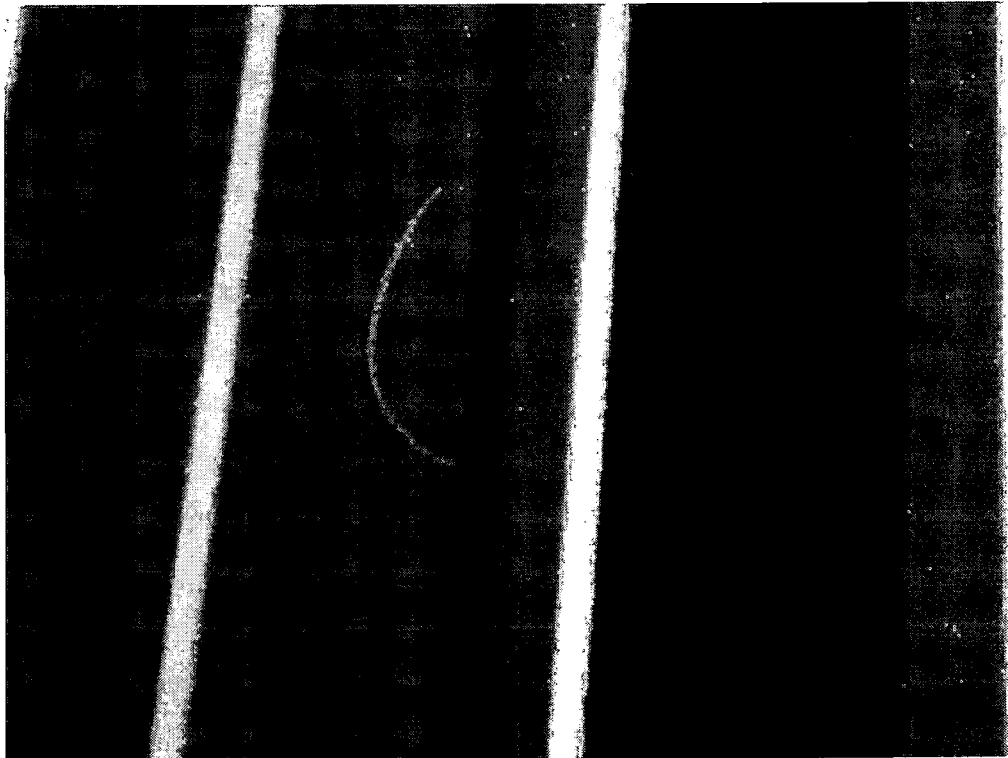




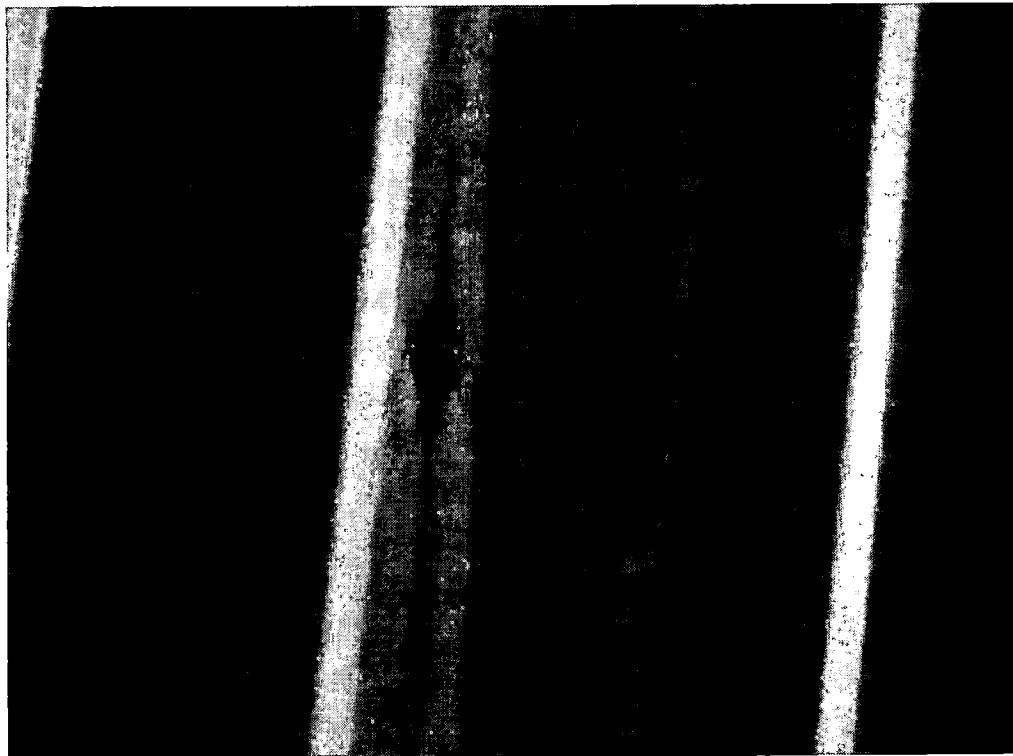
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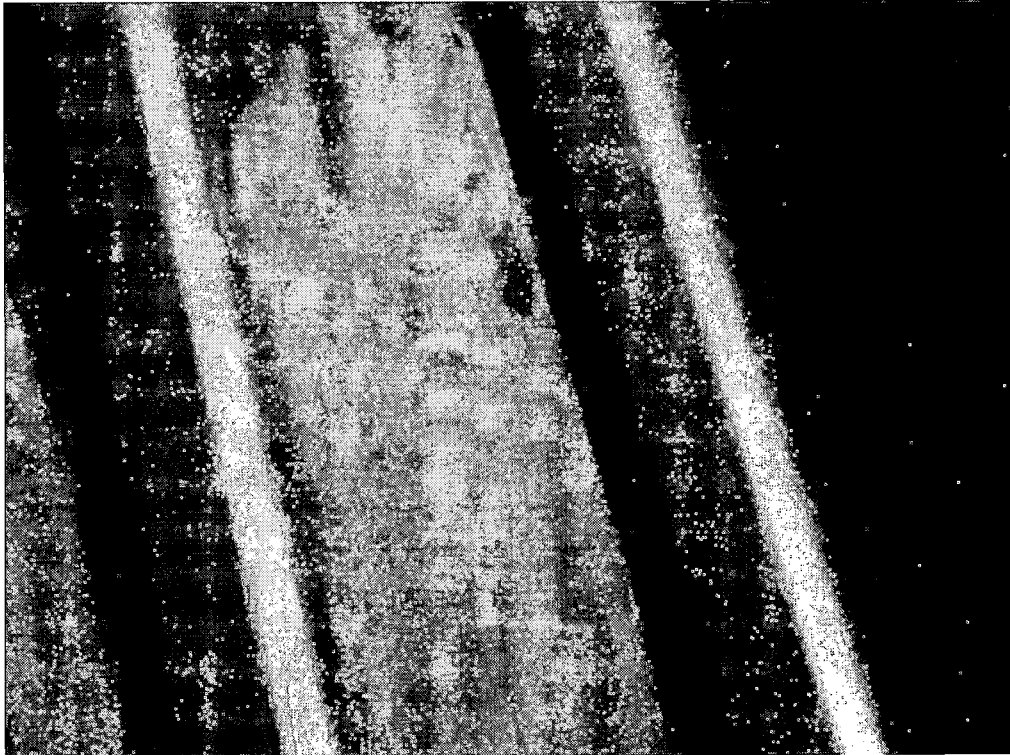




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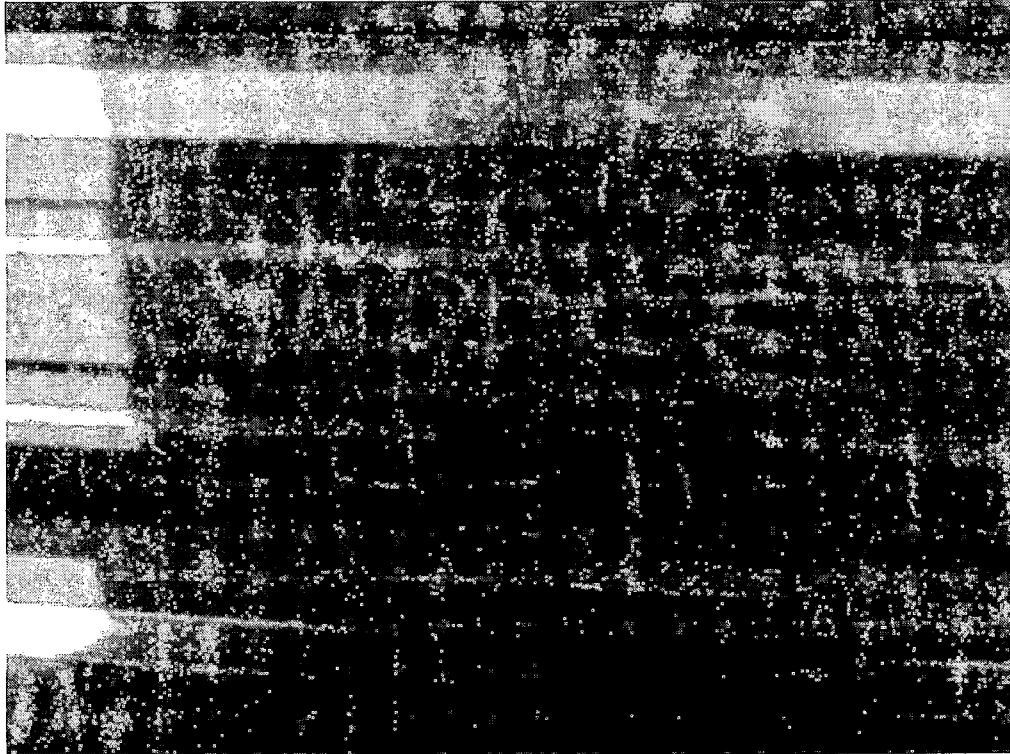




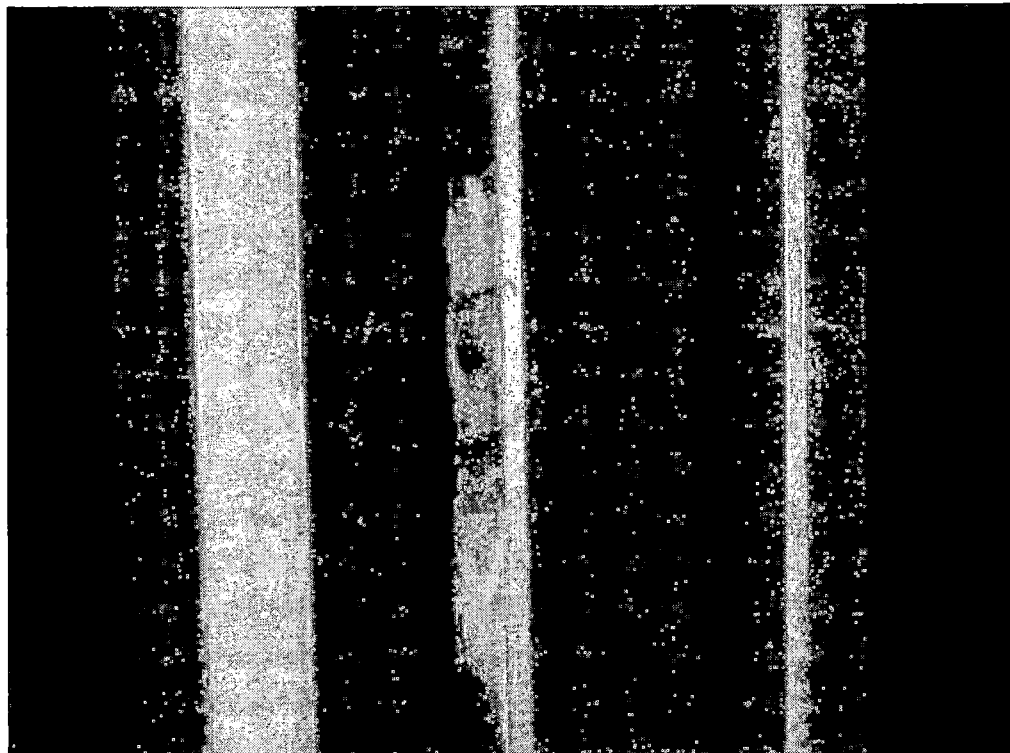
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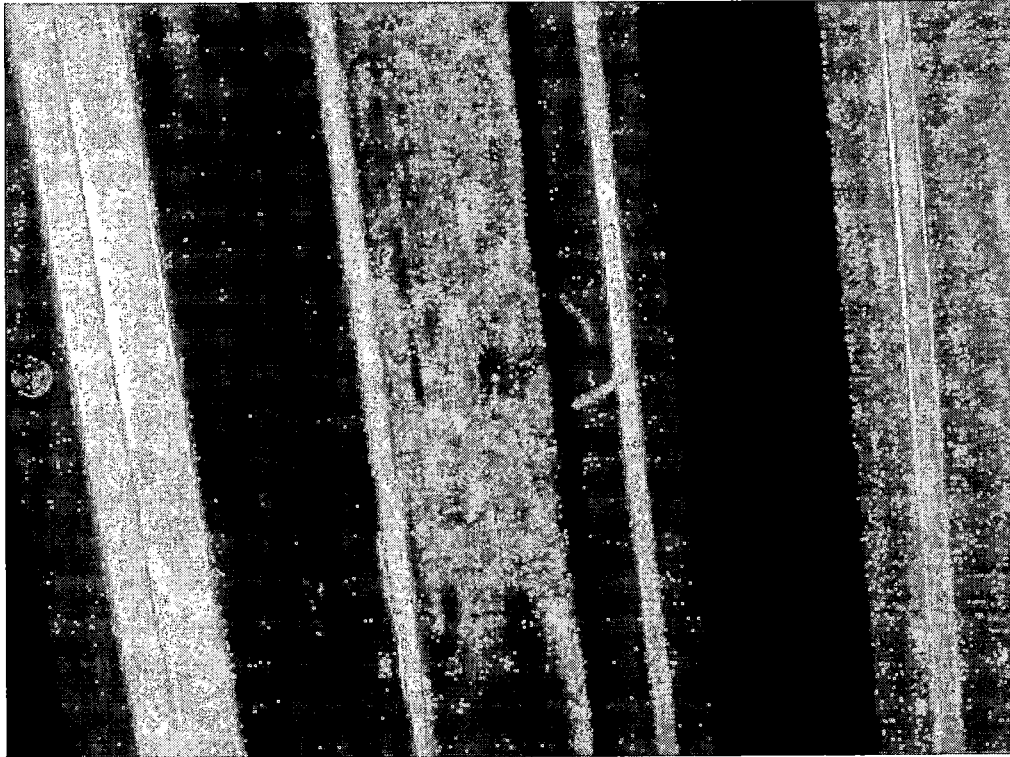




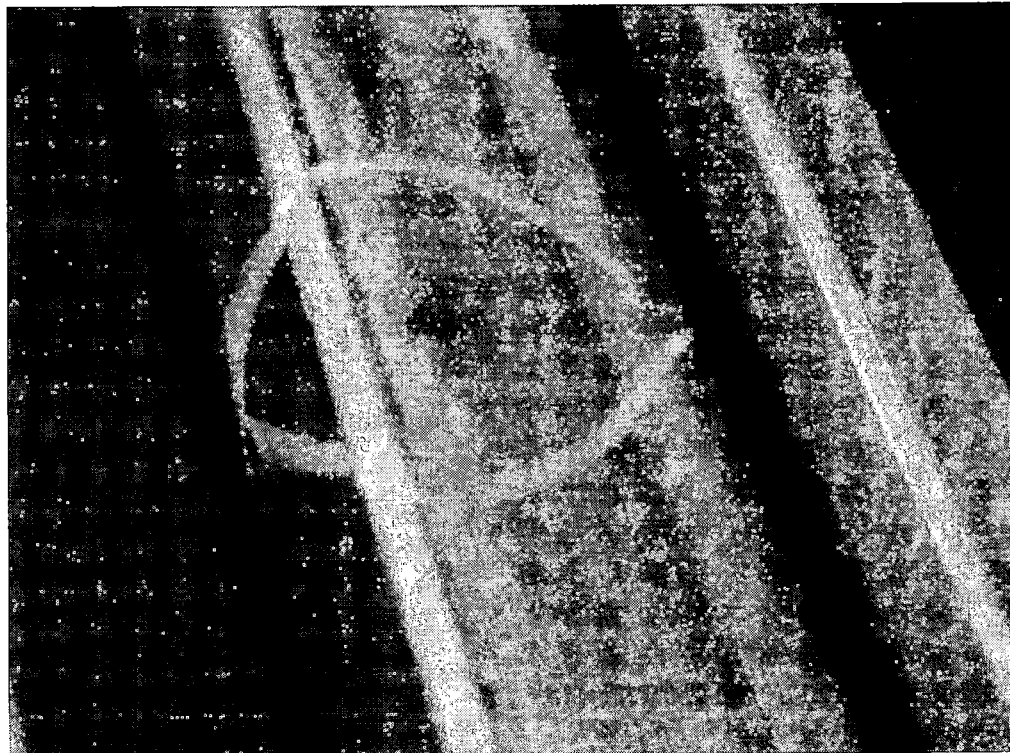
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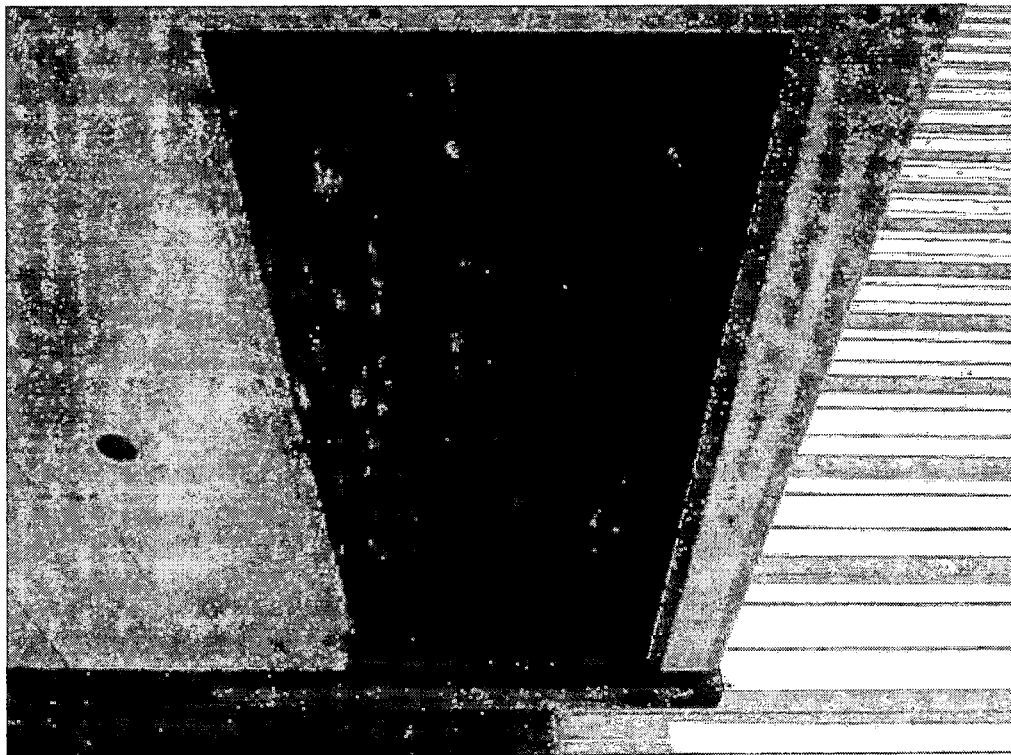
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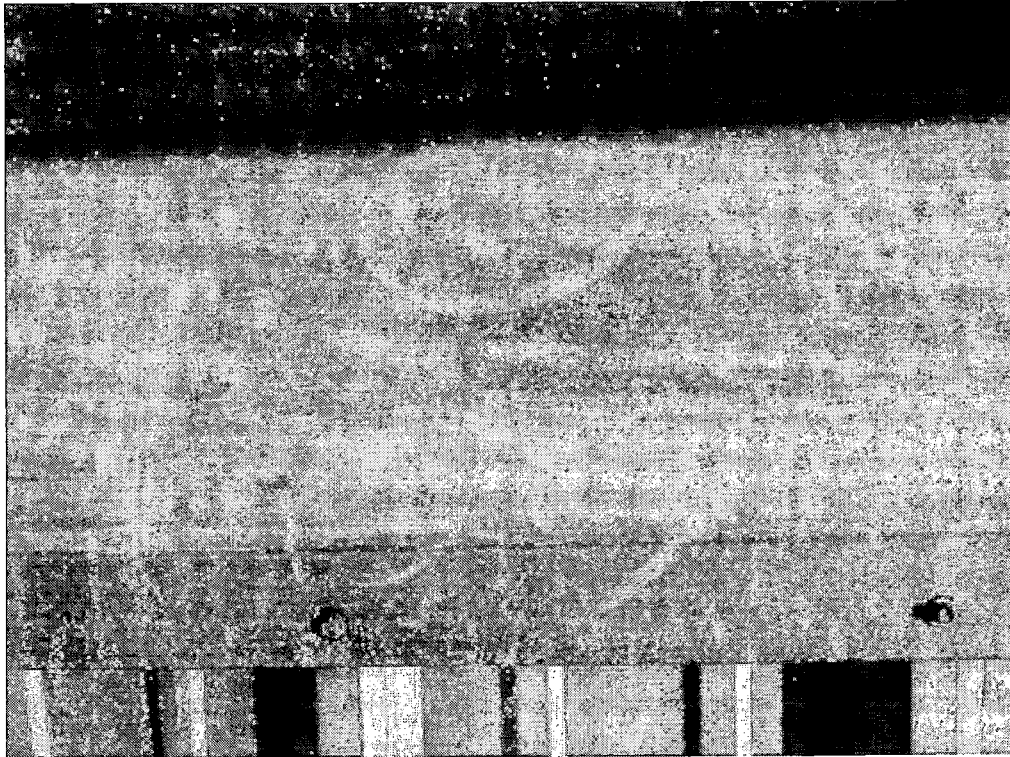




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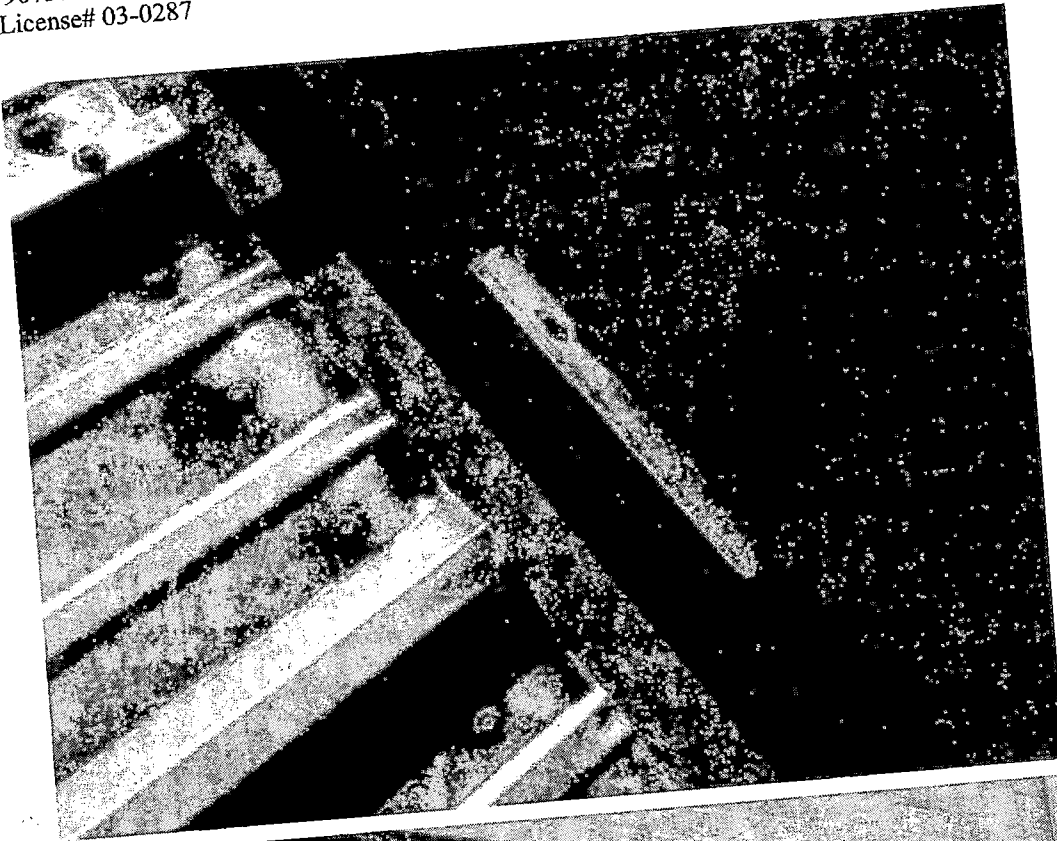
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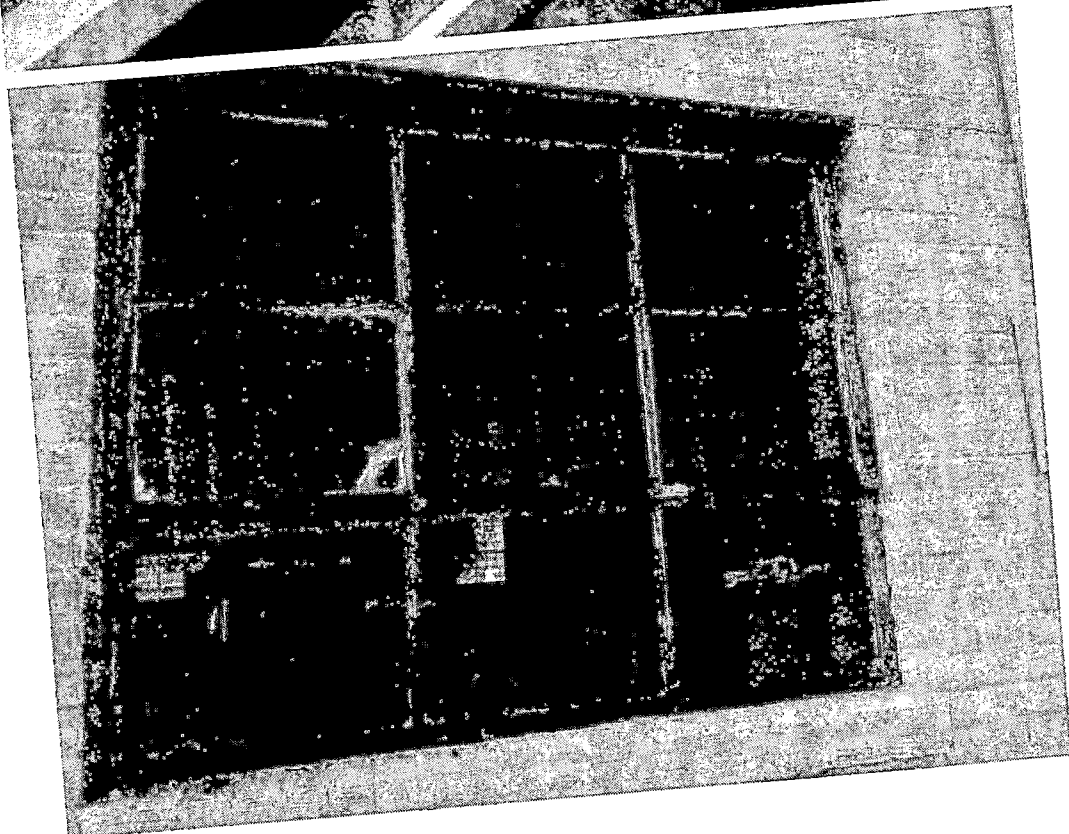
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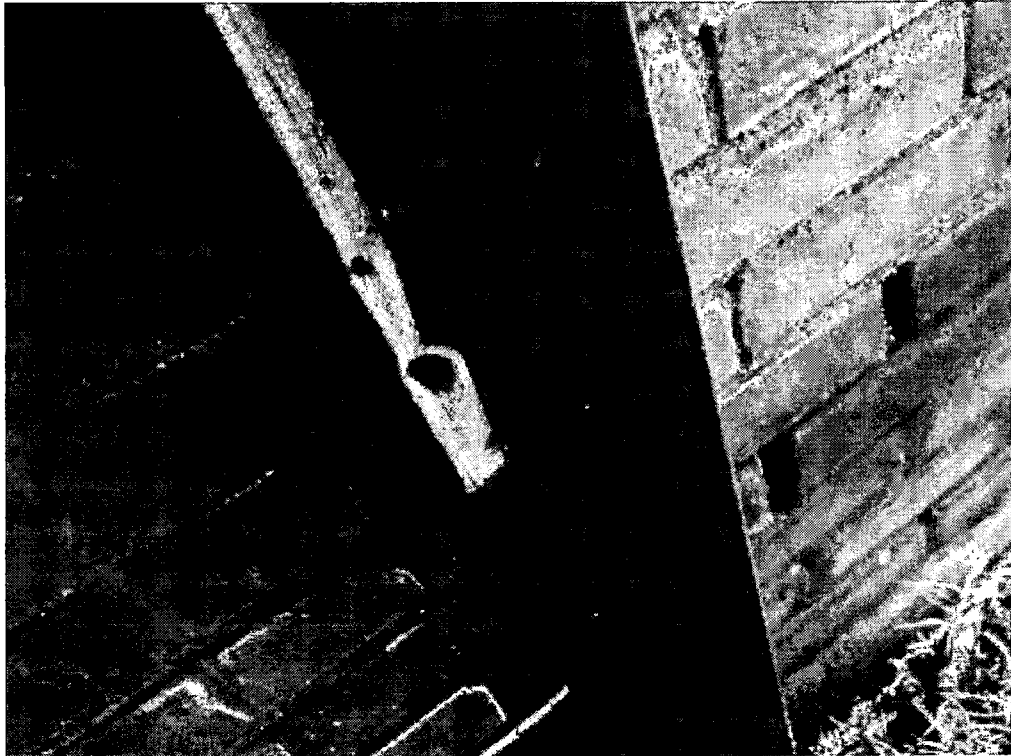




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 Sulphur Springs, Tx 75482  
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Image Detail			
Image No.	Type	Date Taken	Taken By
1	1-K Davis Address	7/21/2015	
2	2-K Davis front elevation	7/21/2015	
3	3-K Davis right elevation	7/21/2015	
4	4-K Davis rear elevation	7/21/2015	
5	5-K Davis left elevation	7/21/2015	
6	6-K Davis overview	7/21/2015	
7	8-K Davis front section hail damage	7/21/2015	
8	9-K Davis front section hail damage	7/21/2015	
9	10-K Davis front section hail damage	7/21/2015	
10	11-K Davis front section hail damage	7/21/2015	
11	12-K Davis front section hail damage	7/21/2015	
12	13-K Davis front section hail damage	7/21/2015	
13	14-K Davis front section hail damage	7/21/2015	
14	16-K Davis front section hail damage	7/21/2015	
15	17-K Davis front section hail damage	7/21/2015	
16	18-K Davis front section hail damage	7/21/2015	
17	19-K Davis	7/21/2015	


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**Continued - Image Detail**

<b>Image No.</b>	<b>Type</b>	<b>Date Taken</b>	<b>Taken By</b>
	front section hail damage		
18	20-K Davis	7/21/2015	
	front section hail damage		
19	21-K Davis	7/21/2015	
	Front section 10'x10' square with 11+ hail impacts		
20	22-K Davis	7/21/2015	
	Front section 10'x10' square overview		
21	23-K Davis	7/21/2015	
	middle section hail damage		
22	25-K Davis	7/21/2015	
	middle section hail damage		
23	27-K Davis	7/21/2015	
	middle section hail damage		
24	28-K Davis	7/21/2015	
	middle section hail damage		
25	30-K Davis	7/21/2015	
	middle section hail damage		
26	31-K Davis	7/21/2015	
	middle section hail damage		
27	32-K Davis	7/21/2015	
	middle section hail damage		
28	33-K Davis	7/21/2015	
	middle section hail damage		
29	35-K Davis	7/21/2015	
	middle section 10'x10' square overview with 11+ hail impacts		
30	37-K Davis	7/21/2015	
	back section hail damage		
31	38-K Davis	7/21/2015	
	back section hail damage		
32	39-K Davis	7/21/2015	
	back section hail damage		
33	41-K Davis	7/21/2015	
	back section hail damage		
34	43-K Davis	7/21/2015	
	back section hail damage		


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**Continued - Image Detail**

<b>Image No.</b>	<b>Type</b>	<b>Date Taken</b>	<b>Taken By</b>
35	44-K Davis back section hail damage	7/21/2015	
36	45-K Davis back section hail damage	7/21/2015	
37	46-K Davis back section hail damage	7/21/2015	
38	47-K Davis back section 10'x10' square with 11+ hail impacts	7/21/2015	
39	49-K Davis AC comb on 3 sides	7/21/2015	
40	51-K Davis AC comb on 3 sides	7/21/2015	
41	52-K Davis AC comb on 3 sides	7/21/2015	
42	55-K Davis coping cap hail damage	7/21/2015	
43	57-K Davis coping cap hail damage	7/21/2015	
44	58-K Davis coping cap hail damage	7/21/2015	
45	59-K Davis coping cap hail damage	7/21/2015	
46	61-K Davis coping cap hail damage	7/21/2015	
47	63-K Davis coping cap hail damage	7/21/2015	
48	64-K Davis coping cap hail damage	7/21/2015	
49	66-K Davis missing coping cap	7/21/2015	
50	67-K Davis missing coping cap	7/21/2015	
51	68-K Davis coping cap hail damage	7/21/2015	
52	69-K Davis	7/21/2015	




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**Continued - Image Detail**

<b>Image No.</b>	<b>Type</b>	<b>Date Taken</b>	<b>Taken By</b>
53	70-K Davis AC trim hail damage R&R	7/21/2015	
54	71-K Davis AC trim hail damage R&R	7/21/2015	
55	72-K Davis broken window	7/21/2015	
56	74-K Davis broken window	7/21/2015	
57	76-K Davis broken window	7/21/2015	
58	77-K Davis broken window	7/21/2015	
59	79-K Davis downspout hail damage 26'	7/21/2015	
60	80-K Davis close up hail damage to downspout	7/21/2015	
61	81-K Davis broken window	7/21/2015	
62	83-K Davis hail damage to grill	7/21/2015	
63	84-K Davis broken window	7/21/2015	
64	85-K Davis broken window	7/21/2015	
65	86-K Davis broken window	7/21/2015	
66	88-K Davis broken window	7/21/2015	
67	89-K Davis broken window	7/21/2015	
68	90-K Davis	7/21/2015	
69	91-K Davis broken window	7/21/2015	
70	92-K Davis	7/21/2015	


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**Continued - Image Detail**

<b>Image No.</b>	<b>Type</b>	<b>Date Taken</b>	<b>Taken By</b>
	exposed hole		
71	93-K Davis insulation damage from water leak	7/21/2015	
72	94-K Davis insulation damage	7/21/2015	
73	96-K Davis insulation damage from water leak	7/21/2015	
74	98-K Davis insulation damage from water leak	7/21/2015	
75	99-K Davis insulation damage from water leak	7/21/2015	
76	100-K Davis insulation damage from water leak	7/21/2015	
77	101-K Davis insulation damage	7/21/2015	
78	102-K Davis insulation damage from water leak	7/21/2015	
79	104-K Davis insulation damage	7/21/2015	
80	105-K Davis insulation damage from water leak	7/21/2015	
81	106-K Davis front section hail damage	7/21/2015	
82	107-K Davis front section hail damage	7/21/2015	
83	108-K Davis front section hail damage	7/21/2015	
84	110-K Davis front section hail damage	7/21/2015	
85	111-K Davis middle section 10'x10' square with 11+ hail impacts	7/21/2015	
86	112-K Davis raer section hail damage	7/21/2015	
87	113-K Davis raer section hail damage	7/21/2015	

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**Continued - Image Detail**

<b>Image No.</b>	<b>Type</b>	<b>Date Taken</b>	<b>Taken By</b>
88	114-K Davis raer section hail damage	7/21/2015	
89	115-K Davis rear section 10'x10' square with 11+ hail impacts	7/21/2015	
90	116-K Davis AC comb 3 sides	7/21/2015	
91	119-K Davis coping cap hail damage	7/21/2015	
92	120-K Davis coping cap hail damage	7/21/2015	
93	121-K Davis rear gutter hail damage	7/21/2015	
94	122-K Davis broken window	7/21/2015	
95	123-K Davis hail damage to 26' downspout	7/21/2015	
96	124-K Davis broken window	7/21/2015	
97	125-K Davis insulation damage from water leak	7/21/2015	

**CAUSE NO. CV44031**

<b>CHRISTOPHER DAVIS, JR.,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
<b>V.</b>	§	<b>62<sup>ND</sup> JUDICIAL DISTRICT</b>
	§	
<b>UNITED STATES LIABILITY</b>	§	
<b>INSURANCE COMPANY,</b>	§	
<b>Defendant.</b>	§	<b>HOPKINS COUNTY, TEXAS</b>

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**PLAINTIFF'S FIRST AMENDED PETITION**

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CHRISTOPHER DAVIS, JR., who files this, Plaintiff's First Amended Petition, against UNITED STATES LIABILITY INSURANCE COMPANY, and for causes of action would respectfully show the court as follows:

**I. PRELIMINARY INFORMATION AND DEFINITIONS**

Insured:	Christopher Davis, Jr. ("Plaintiff")
Policy Number:	CP 1618335A ("Policy")
Defendant's File Number:	K117722 ("File" or "File Number")
Date of Loss:	May 11, 2017 ("Date of Loss")
Insured Property:	420 Main Street Sulphur Springs, Texas 75482 ("Insured Property")
Insurer:	United States Liability Insurance Company ("Defendant")
Defendant's Counsel:	Richard J. Kasson Gonzalez Chiscano Angulo & Kasson, PC 9601 McAllister Freeway 410, Suite 401 San Antonio, Texas 78216 ("Defendant's Counsel")

Triple Crown Roofing &  
Construction, Inc. Estimate:

Inspection performed by Estimator Blake Johnson  
Total Estimate Amount: \$89,232.35  
("Triple Crown Estimate")

## **II. DISCOVERY CONTROL PLAN**

Plaintiff intends for discovery to be conducted under Level II, pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

## **III. PARTIES**

Plaintiff is an individual who resides in Texas.

Defendant is a foreign company registered to engage in the business of insurance in the State of Texas. Defendant may be served with process by in person or certified mail, return receipt requested, by serving Defendant's Counsel, who has already appeared herein.

## **IV. JURISDICTION**

Damages sought are within the jurisdictional limits of this Court. Plaintiff seeks monetary relief of over \$200,000.00, but no more than \$1,000,000.00.

The Court has jurisdiction over Defendant because Defendant engages in the business of insurance in the State of Texas and the causes of action arise out of Defendant's business activities in the State of Texas.

## **V. VENUE**

Venue is proper in Hopkins County, Texas because the Insured Property is situated in Hopkins County, Texas and/or the contract was signed in Hopkins County, Texas.<sup>1</sup>

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<sup>1</sup> TEX. CIV. PRAC. & REM. CODE. § 15.032.



## **VI. FACTS**

Plaintiff is the owner of the Policy issued by Defendant. Plaintiff owns the Insured Property.

Defendant sold the Policy, insuring the property that is the subject of this lawsuit to Plaintiff. Plaintiff suffered a significant loss with respect to the Insured Property.

Plaintiff submitted a claim to Defendant with Date of Loss for wind/hail damage to the Insured Property.

Defendant assigned the File Number to Plaintiff's claim.

Plaintiff hired Estimator Blake Johnson with Triple Crown Roofing & Construction, Inc. to provide a repair estimate to the affected Insured Property. Following Johnson's inspection of the affected Insured Property, Plaintiff learned that Defendant's estimate was grossly undervalued. Specifically, Johnson estimated it would cost \$89,232.35 to repair the affected Insured Property. Defendant estimated it would cost \$1,601.26 to repair the same Insured Property. Defendant, in bad faith, undervalued the damage to the Insured Property by approximately \$87,600.00. The Triple Crown Estimate is attached hereto as **Exhibit A**.

Defendant failed to properly adjust the claim and/or failed to timely pay the claim with obvious knowledge and evidence of serious cosmetic and structural damage. Defendant's conduct constitutes violations of the Texas Insurance Code. Defendant failed to make an attempt to settle Plaintiff's claim in a fair manner although it was aware of its liability to Plaintiff under the Policy. Defendant's conduct constitutes violations of the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*.<sup>2</sup>

Specifically, Defendant failed to offer Plaintiff adequate compensation, without any explanations as to why payment was not being made. Furthermore, Defendant did not

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<sup>2</sup> TEX. INS. CODE § 541.060(2).

communicate that any payments would be forthcoming to pay for the losses covered under the Policy nor did it provide any explanation for the failure to adequately settle Plaintiff's claim. Defendant's conduct constitutes violations of the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*.<sup>3</sup>

Defendant refused to compensate Plaintiff, under the terms of the Policy, even though Defendant failed to conduct a reasonable investigation. Specifically, Defendant performed an outcome-oriented investigation of Plaintiff's claim, which resulted in a biased, unfair and inequitable evaluation of Plaintiff's losses on the Insured Property. Defendant's conduct constitutes violations of the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*.<sup>4</sup>

Defendant failed to meet its obligations under the Texas Insurance Code regarding payment of the claim without delay. Specifically, Defendant has delayed payment of Plaintiff's claim longer than allowed and, to date, Plaintiff has not yet received payment for the claim. Defendant's conduct constitutes a violation of the *Texas Prompt Payment of Claims Act*.<sup>5</sup>

From and after the time Plaintiff's claim was presented to Defendant, the liability of Defendant to pay the full claim in accordance with the terms of the Policy was reasonably clear. However, Defendant has refused to pay Plaintiff, despite there being no basis whatsoever on which a reasonable insurance company would have relied on to deny payment. Defendant's conduct equates to breaches of the common law duty of good faith and fair dealing. As a result of Defendant's acts and omissions, Plaintiff was forced to retain the attorney who is representing Plaintiff in this matter.

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<sup>3</sup> TEX. INS. CODE § 541.060(3).

<sup>4</sup> TEX. INS. CODE § 541.060(7).

<sup>5</sup> TEX. INS. CODE §§ 542.051-542.061.

## **VII. CAUSES OF ACTION**

Pursuant to Texas Rules of Civil Procedure 47 and 48, and pleading rules, allegations in this Petition are made in the alternative.

### **COUNT ONE: BREACH OF CONTRACT**

Defendant's conduct, as described in this Petition, constitutes a breach of the insurance contract made between Defendant and Plaintiff. Defendant's failure and refusal, as described above, to pay the compensation as obligated to do so under the terms of the Policy in question, and under the laws of the State of Texas, constitutes material breach of the insurance contract with Plaintiff. Furthermore, Plaintiff has suffered damages in the form of actual damages, consequential damages and reasonable and necessary attorneys' fees for such violations of the Texas Insurance Code.

Defendant's conduct constitutes multiple violations of the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*.<sup>6</sup> All violations set forth are made actionable by TEX. INS. CODE § 541.151.

- a. Defendant's unfair practice, as described above, of misrepresenting to Plaintiff material facts relating to the coverage at issue, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance<sup>7</sup>;
- b. Defendant's unfair settlement practice, as described above, of failing to attempt in good faith to effectuate a prompt, fair and equitable settlement of the claim, even though Defendant's liability under the Policy was reasonably clear, constitutes an unfair method of competition and an unfair and deceptive act or practice in the

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<sup>6</sup> TEX. INS. CODE, Chapter 541.

<sup>7</sup> TEX. INS. CODE §§ 541.051, 541.060-541.061.

business of insurance<sup>8</sup>;

- c. Defendant's unfair settlement practice, as described above, of failing to promptly provide Plaintiff with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for its offer of a compromise settlement of the claim, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance<sup>9</sup>;
- d. Defendant's unfair settlement practice, as described above, of failing within a reasonable time to affirm or deny coverage of the claim or to submit a reservation of rights to Plaintiff constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance<sup>10</sup>; and/or
- e. Defendant's unfair settlement practice, as described above, of refusing to pay the claim without conducting a reasonable investigation, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance.<sup>11</sup>

Defendant's conduct constitutes multiple violations of the *Texas Prompt Payment of Claims Act*.<sup>12</sup> All violations set forth are made actionable by TEX. INS. CODE § 542.060.

- a. Defendant's failure, as described above, to acknowledge receipt of Plaintiff's claim, commence investigation of the claim and request from Plaintiff all items, statements and forms reasonably required within the applicable time constraints,

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> TEX. INS. CODE §§ 541.051, 541.060-541.061; Noncompliance with Texas Insurance Code Chapter 542: "The Prompt Payment of Claims Act."

<sup>12</sup> TEX. INS. CODE, Chapter 542.

constitutes a non-payment of the claim.<sup>13</sup>

- b. Defendant's delay of payment of Plaintiff's claim, as described above, following its receipt of all items, statements and forms reasonably requested and required, longer than the amount of time provided for, constitutes a non-prompt payment of the claim.<sup>14</sup>

## **COUNT TWO: BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

Defendant's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to Plaintiff in accordance with Plaintiff's insurance contract.

Defendant's failure, as described above, to adequately and reasonably investigate and evaluate Plaintiff's claim, although at that time Defendant knew or should have known by the exercise of reasonable diligence that its liability was reasonably clear, constitutes a breach of the common law duty of good faith and fair dealing.

## **COUNT THREE: BREACH OF FIDUCIARY DUTY**

Defendant agreed to act as a fiduciary for Plaintiff under the insurance contract. Defendant breached its fiduciary duty by failure to act in Plaintiff's best interests.

## **COUNT FOUR: TEXAS PROMPT PAYMENT OF CLAIMS ACT**

Defendant's conduct, as described above, constitutes multiple violations of the *Texas Prompt Payment of Claims Act*.

As described above, Plaintiff has a claim under an insurance policy, the insurer is liable for the claim and the insurer has failed to comply with the requirements of the *Texas Prompt Payment of Claims Act*.<sup>15</sup>

As described above, Defendant failed to perform one or more of the following duties not

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<sup>13</sup> TEX. INS. CODE §§ 542.055-542.060.

<sup>14</sup> *Id.*

<sup>15</sup> TEX. INS. CODE §§ 542.051-542.061.



later than the 15th day (30th day if Defendant is a surplus lines insurer) after receipt of notice of the claim:

- Acknowledge the claim. Defendant failed to acknowledge receipt of the claim, including separate claims arising from the same incident<sup>16</sup>;
- Record the acknowledgement. Defendant failed to make a record of the date, manner and content of the acknowledgement<sup>17</sup>;
- Commence the investigation. Defendant failed to commence a reasonable investigation of the claim<sup>18</sup>; and/or
- Request information from Plaintiff. Defendant failed to request from the Plaintiff all items, statements and forms reasonably required from Plaintiff.<sup>19</sup>

As described above, Defendant failed to perform one or more of the following duties after Defendant received all items, statements and forms reasonably required from Plaintiff:

- Accept or reject the claim. Defendant failed to notify Plaintiff by the 15th business day that Defendant either accepted or rejected the claim<sup>20</sup>;
- State reasons for any rejection. Defendant failed to notify Plaintiff of any reasons for denying such claim<sup>21</sup>;
- Ask for more time and reasons why. Defendant failed to notify Plaintiff it needed more time and the reasons for seeking more time<sup>22</sup>;
- Pay the claim after accepting. Defendant failed to pay the claim within five business days (20th business day if Defendant is a surplus lines insurer)<sup>23</sup>;

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<sup>16</sup> TEX. INS. CODE § 542.055(a)(1).

<sup>17</sup> TEX. INS. CODE § 542.055(c).

<sup>18</sup> TEX. INS. CODE § 542.055(a)(2).

<sup>19</sup> TEX. INS. CODE § 542.055(a)(3).

<sup>20</sup> TEX. INS. CODE § 542.056(d).

<sup>21</sup> TEX. INS. CODE § 542.056(c).

<sup>22</sup> TEX. INS. CODE § 542.056(d).

- Pay the claim after Plaintiff performs any condition. If Defendant sought a condition on Plaintiff, it did not pay such claim within five business days (20th business day if Defendant is a surplus lines insurer) after such condition was satisfied<sup>24</sup>; and/or
- Pay the claim within 60 days after receipt of information. Defendant failed to pay the claim within 60 days after receiving the items requested from Plaintiff.<sup>25</sup>

**COUNT FIVE: TEXAS UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES ACT**

Defendant's conduct, as described above, constitutes multiple violations of the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*.

Defendant engaged in one or more of the following settlement practices with respect to a claim made by Plaintiff:

- Misrepresenting to Plaintiff a material fact or policy provision relating to the coverage at issue<sup>26</sup>;
- Failing to attempt in good faith to effectuate a prompt, fair and equitable settlement of:
  - The claim with respect to which Defendant's liability had become reasonably clear<sup>27</sup>; or
  - A claim under one portion of the Policy with respect to which Defendant's liability had become reasonably clear in order to influence Plaintiff to settle another claim under another portion of the coverage, unless payment

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<sup>23</sup> TEX. INS. CODE § 542.057(a),(c).

<sup>24</sup> TEX. INS. CODE § 542.057(b),(c).

<sup>25</sup> TEX. INS. CODE § 542.058(a).

<sup>26</sup> TEX. INS. CODE § 541.060(1).

<sup>27</sup> TEX. INS. CODE § 541.060(2)(A).

under one portion of the coverage constituted evidence of liability under another portion<sup>28</sup>;

- Failing to provide promptly to Plaintiff a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for Defendant's denial of the claim or for the offer of a compromise settlement of the claim<sup>29</sup>;
- Failing within a reasonable time to:
  - Affirm or deny coverage of the claim to Plaintiff<sup>30</sup>;
  - Submit a reservation of rights to Plaintiff<sup>31</sup>;
- Refusing, failing or unreasonably delaying an offer of settlement under first-party coverage on the basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the Policy<sup>32</sup>;
- Undertaking to enforce a full and final release of the claim from Plaintiff when only a partial payment had been made, unless the payment was a compromise settlement of a doubtful or disputed claim<sup>33</sup>; and/or
- Refusing to pay the claim without conducting a reasonable investigation with respect to the claim.<sup>34</sup>

Further, Defendant engaged in one or more of the following settlement practices, in violation of the *Texas Unfair Claim Settlement Practices Act*, with respect to the claim made by Plaintiff:

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<sup>28</sup> TEX. INS. CODE § 541.060(2)(B).

<sup>29</sup> TEX. INS. CODE § 541.060(3).

<sup>30</sup> TEX. INS. CODE § 541.060(4)(A).

<sup>31</sup> TEX. INS. CODE § 541.060(4)(B).

<sup>32</sup> TEX. INS. CODE § 541.060(5).

<sup>33</sup> TEX. INS. CODE § 541.060(6).

<sup>34</sup> TEX. INS. CODE § 541.060(7).

- Misrepresentations and false advertising of policy contracts;
- False information and advertising generally;
- Deceptive names, words, symbols, devises and slogans; and/or
- Misrepresentation of the insurance policies.<sup>35</sup>

Defendant engaged in one or more of the following settlement practices with respect to the claim made by Plaintiff:

- Making an untrue statement of material fact;
- Failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made;
- Making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of a material fact;
- Making a material misstatement of law; and/or
- Failing to disclose a matter required by law to be disclosed, including failing to make disclosure in accordance with another provision of the Texas Insurance Code.<sup>36</sup>

## **VIII. DAMAGES**

Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the proximate and/or producing causes of damages sustained by Plaintiff.

a. For breach of contract, Plaintiff is entitled to regain the benefit of his bargain, which is the amount of the Policy benefits withheld, together with consequential damages and attorneys' fees.

b. For breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to actual damages, direct and indirect consequential damages, exemplary damages and mental anguish as to be determined by the jury.<sup>37</sup>

c. For noncompliance with the *Texas Prompt Payment of Claims Act*, which is strict

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<sup>35</sup> TEX. INS. CODE §§ 541.051-541.052, 541.059-541.060, 542.001.

<sup>36</sup> TEX. INS. CODE § 541.061.

<sup>37</sup> See *Lee v. Safemate Life Ins. Co.*, 737 S.W.2d 84, 1987 Tex. App. LEXIS 8111 (Tex. App.—El Paso 1987, writ dismissed).

liability without any good faith exceptions, Plaintiff is entitled to the amount of his claim, as well as eighteen (18) percent interest on the total amount of the claim per annum post-judgment interest, as allowed by law, and for any other further relief, either at law or in equity, to which Plaintiff may show himself to be justly entitled.<sup>38</sup>

d. For noncompliance with the *Texas Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Act*, Plaintiff is entitled to actual damages, which includes the loss of the benefits that should have been paid pursuant to the Policy, including but not limited to, direct and indirect consequential damages, mental anguish, court costs and mandatory attorneys' fees.<sup>39</sup> For knowing and intentional conduct of the acts complained of, Plaintiff asks for three times economic damages and three times mental anguish damages.<sup>40</sup>

e. Plaintiff seeks attorneys' fees at a contingent rate of 35%. If attorneys' fees must be quantified at an hourly rate, Plaintiff seeks attorney fees at \$350.00 an hour.<sup>41</sup> Attorneys' fees are awarded to a party as part of the damages owed by an insurance company that violates this chapter, and it is appropriate to require the insurer to pay a contingency fee, which may be greater than an hourly fee. The specter of large attorneys' fee awards may serve as additional incentive to the insurance company to respond promptly and diligently to its insured's claims.

f. Furthermore, the denial and/or wrongful delay to provide Plaintiff with insurance benefits by Defendant was apparently part of a common plan, routine, scheme and/or design calculated to deny insurance benefits to policyholders. In order to punish Defendant and to set an example and thereby prevent other policyholders from being treated in this manner, exemplary damages should be awarded. Accordingly, Plaintiff seeks exemplary damages in an amount the jury deems appropriate.

## **IX. ATTORNEYS' FEES**

Request is made for all costs and reasonable and necessary attorneys' fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just, as

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<sup>38</sup> See *Am. Nat'l. Prop. & Cas. Co. Inc. v. Patty*, No. 05-00-01171-CV, 2001 Tex. App. LEXIS 5493 (Tex. App.—Dallas Aug. 15, 2001, pet. denied) (unpublished). The formula for calculating the interest penalty under this article is "I= P R T," where "I" is interest, "P" equals the principal, "R" equals the rate of interest, and "T" equals time over which interest is to be calculated. Thus, where the insurer tendered less than the face value of the policy, the penalty should have been calculated until judgment was entered against the insurer. Tender of partial payment of a claim does not reduce the penalty: the penalty is calculated based on the amount of the "claim," not the difference between the claim and any partial payment that is made. See *Republic Underwriters Ins. Co. v. Mex-Tex, Inc.*, 106 S.W.3d 174, 183-84 (Tex. App.—Amarillo 2003, pet. denied); *Higginbotham v. State Farm Mut. Auto. Ins. Co.*, 103 F.3d 456, 461 (5th Cir. 1997). Violations of Tex. Ins. Code § 542 are strict liability without any exception.

<sup>39</sup> See *Rosenblatt v. Freedom Life Ins. Co. of Am.*, 240 S.W.3d 315, 2007 Tex. App. LEXIS 6177 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

<sup>40</sup> See TEX. INS. CODE § 541.152 and TEX. BUS. & COM. CODE § 17.50.

<sup>41</sup> See *Mid-Century Ins. Co. v. Barclay*, 880 S.W.2d 807, 1994 Tex. App. LEXIS 1480 (Tex. App.—Austin 1994, writ denied).

provided by: (a) Section 17.50(d) of the Texas Business and Commerce Code; (b) Chapter 38 of the Texas Civil Practice and Remedies Code; (c) Section 37.009 of the Texas Civil Practice and Remedies Code; and (d) common law.

**X. JURY DEMAND**

Plaintiff hereby requests a trial by jury of all issues of fact in this case and has tendered the jury fee.

**XI. PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff respectfully prays that Defendant be cited to appear and answer herein, and that upon final hearing of this case, judgment be entered for Plaintiff against Defendant for actual damages requested above in an amount in excess of the minimum jurisdictional limits of the Court, together with pre-judgment and post-judgment interest at the maximum rate allowed by law, attorneys' fees, costs of court, and such other and further relief to which Plaintiff may be entitled at law or in equity, whether pled or unpled.

Respectfully submitted,

**ADKERSON, HAUDER & BEZNEY, P.C.**

By: /s/ Paul A. Bezney

Paul A. Bezney

State Bar No. 00787077

1700 Pacific Avenue, Suite 4450

Dallas, Texas 75201

Telephone: 214/740-2500

Facsimile: 214/740-2544

E-mail: [bezney@ahblaw.net](mailto:bezney@ahblaw.net) (e-file only)

**ATTORNEY FOR PLAINTIFF**



**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing instrument has been served upon all the parties,  
pursuant to the Texas Rules of Civil Procedure on the 23<sup>rd</sup> of May, 2019.

/s/ Paul A. Bezney  
Paul A. Bezney



## Triple Crown Roofing & Construction, Inc.

Triple Crown Roofing & Construction, Inc.  
1317 W. Industrial Dr.  
Sulphur Springs, Tx 75482  
Tax Id: 9073023  
RCAT License# 03-0287

Client: Kiffer Davis  
Property: 429 Main St  
Sulphur Springs, TX 75482

Operator: BLAKE

Estimator: BLAKE JOHNSON  
Company: TRIPLE CROWN CONSTRUCTION

Business: (903) 335-0168  
E-mail: blake@triplecrownusa.com

Type of Estimate: Hail  
Date Entered: 11/1/2017 Date Assigned:

Price List: TXDF8X\_AUG18  
Labor Efficiency: Restoration/Service/Remodel  
Estimate: KIFFER\_DAVISCOMMECIA

Please review the enclosed line itemized bid for the work to be performed at the above referenced property.

This scope does not include any "unforeseen" or "hidden" damages that may be associated with the property. If additional damages are found, work will cease and they will be addressed and reviewed prior to completion.

### Incurred Cost of General Contractor Overhead & Profit

**Triple Crown Roofing & Construction, Inc. does not employ laborers to perform restoration work. Triple Crown Roofing & Construction, Inc. subcontracts all repair work to specialty contractors.**

**General Overhead** are expenses incurred by a General Contractor, that cannot be attributed to individual projects, and include any and all expenses necessary for the General Contractor to operate their business.

Examples (including but not limited to): General and Administrative (G&A) expenses, office rent, utilities, office supplies, salaries for office personnel, depreciation on office equipment, licenses, and advertising.

**General Overhead** expenses are not included in Xactware's unit pricing, but are typically added to the estimate as a percentage of the total bid along with the appropriate profit margin. These two costs together constitute what is normally referred to in the insurance restoration industry as General Contractor's O&P, or just O&P.

**Profit** is typically added to the cost of a construction-related job to allow the entity performing the work to grow their company through reinvestment.

### Incurred Cost of Supervision / Project Management Hours

**Job-Related Overhead** are expenses that can be attributed to a project, but cannot be attributed to a specific task and include any and all necessary expenses to complete the project other than direct materials and labor. Examples (including but not limited to): Project managers, on site portable offices and restroom facilities, temporary power and fencing, security if needed, etc. Job Related Overhead expenses should be added as separate line items to the Xactimate estimate. This is done within the Line Item Entry window of an Xactimate estimate by selecting the proper price list items, or creating your own miscellaneous items.

*Source: Xactware White Paper: Overhead and Profit*



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### **Incurred Cost of Labor Minimum Charges**

Small jobs performed by subcontractors may require a minimum number of hours or cost to cover the known drive-time, setup time, and applicable administrative costs as well as time needed to perform the repair. Labor minimums are separate from base service charges.

**Triple Crown Roofing & Construction, Inc. does not employ laborers to perform restoration work. Triple Crown Roofing & Construction, Inc. subcontracts all repair work to specialty contractors.**

**Labor Minimum vs. Base Service Charges** The key distinction between a labor minimum and a service charge is that the minimum charge includes time (labor) needed to actually perform the work while the service charge does not. Service charges, as defined, include only the drive-time and mobilization fees which are applied in many cases regardless of the amount of work being done. Minimum charges on the other hand, are no longer needed as the amount of labor required to perform the task exceeds the required minimum hours or cost.

Thank you for the opportunity for your business.

Triple Crown Roofing and Construction, Inc.  
Blake Johnson 903-335-0168

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**KIFFER\_DAVISCOMMECIA****Metal Roofing**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
12a. Remove Metal roofing	6,096.00 SF	0.39	0.00	196.14	475.48	3,049.06
12b. Metal roofing	6,096.00 SF	0.00	4.92	3,143.25	6,132.24	39,267.81
17a. Remove Neoprene pipe jack flashing for metal roofing	1.00 EA	6.11	0.00	0.50	1.22	7.83
17b. Neoprene pipe jack flashing for metal roofing	1.00 EA	0.00	46.64	5.65	9.68	61.97
14a. Remove Steel rake/gable trim - color finish	225.00 LF	0.46	0.00	8.54	20.70	132.74
14b. Steel rake/gable trim - color finish	225.00 LF	0.00	5.07	139.77	237.30	1,517.82
15a. Remove Drip edge	105.00 LF	0.26	0.00	2.25	5.46	35.01
15b. Drip edge	105.00 LF	0.00	1.87	21.83	40.40	258.58
16a. Remove Closure strips for metal roofing - inside and/or outside	220.00 LF	0.64	0.00	11.62	28.16	180.58
16b. Closure strips for metal roofing - inside and/or outside	220.00 LF	0.00	1.65	39.21	74.46	476.67
Totals: Metal Roofing				3,568.76	7,025.10	44,988.07

**Insulation**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
10a. Remove Vinyl-faced/laminated insulation - 3"	6,400.80 SF	0.18	0.00	95.05	230.42	1,477.61
10b. Vinyl-faced/laminated insulation - 3"	6,400.80 SF	0.00	1.55	1,077.25	2,036.00	13,034.49
Totals: Insulation				1,172.30	2,266.42	14,512.10

**Gutters**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
7a. Remove Gutter / downspout - box - aluminum - 7" to 8"	175.00 LF	0.39	0.00	5.63	13.66	87.54
7b. Gutter / downspout - box - aluminum - 7" to 8"	175.00 LF	0.00	16.45	431.83	614.62	3,925.20
22. Metal Structure Installer - per hour	8.00 HR	0.00	71.23	47.01	113.96	730.81

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**CONTINUED - Gutters**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
<i>Additional time to fabricate/install gutters.</i>						
Totals: Gutters				484.47	742.24	4,743.55

**HVAC**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
6. Comb HVAC units per Paul's Heat and Air	1.00 EA	0.00	550.00	45.38	110.00	705.38
Totals: HVAC				45.38	110.00	705.38

**Miscellaneous**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
1. Dumpster load - Approx. 30 yards, 5-7 tons of debris	1.00 EA	542.00	0.00	44.72	108.40	695.12
2. Telehandler/forklift and operator	40.00 HR	0.00	126.71	418.14	1,013.68	6,500.22
5. Temporary toilet (per month)	1.00 MO	0.00	201.80	16.65	40.36	258.81
18. Commercial Supervision / Project Management - per hour	60.00 HR	0.00	60.00	297.00	720.00	4,617.00
Totals: Miscellaneous				776.51	1,882.44	12,071.15
<b>Line Item Totals: KIFFER_DAVISCOMMECIA</b>				<b>6,047.42</b>	<b>12,026.20</b>	<b>77,020.25</b>

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**Summary**

Line Item Total	58,946.63
Material Sales Tax	1,184.31
Subtotal	60,130.94
Overhead	6,013.10
Profit	6,013.10
Comm. Rpr/Rmdl Tax	4,863.11
<b>Replacement Cost Value</b>	<b>\$77,020.25</b>
<b>Net Claim</b>	<b>\$77,020.25</b>

\_\_\_\_\_  
 BLAKE JOHNSON

The parties acknowledge and agree that CONTRACTOR is providing its services exclusively to Owner, and not to Owner's insurance company, mortgage company, or any other third party not a part of this Contract. CONTRACTOR will, if requested by Owner, meet with Owner's insurance representative to discuss the specific damage which Owner's home has suffered, and the scope of work which CONTRACTOR recommends in order to return Owner's roof to its pre-damage condition, however Owner acknowledges that CONTRACTOR is not a public adjustor and does not provide public adjusting services to its customers.

Property Owner has 3 days to cancel this contract. X \_\_\_\_\_ Initial Date: \_\_\_\_\_

X \_\_\_\_\_ Date: \_\_\_\_\_  
 Property Owner

X \_\_\_\_\_ Date: \_\_\_\_\_  
 Triple Crown





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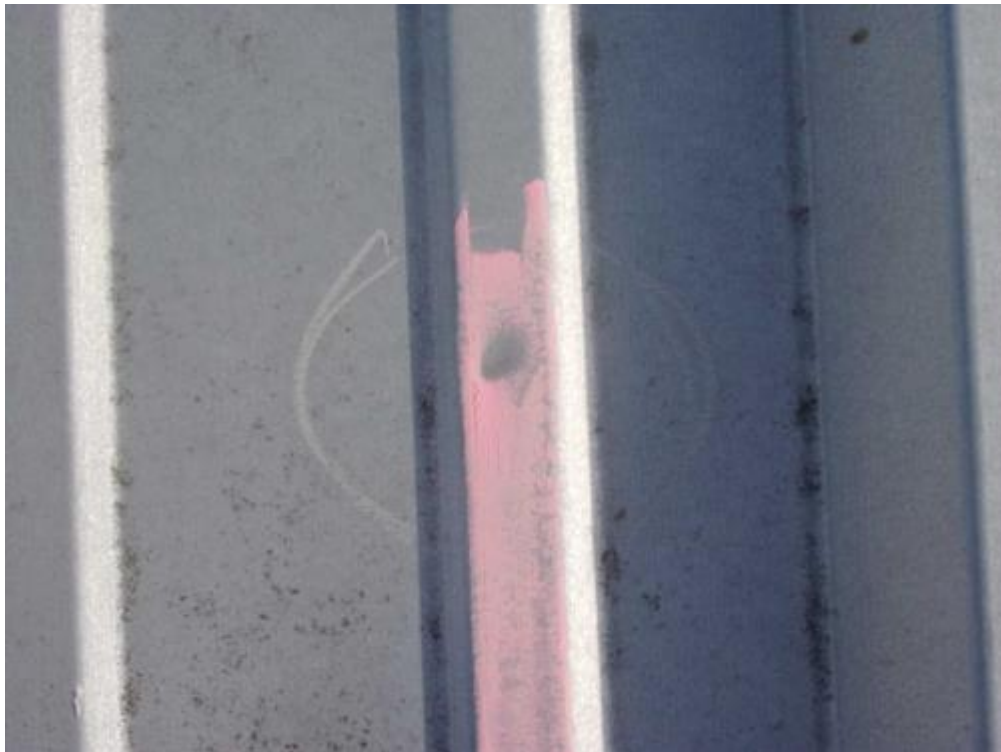
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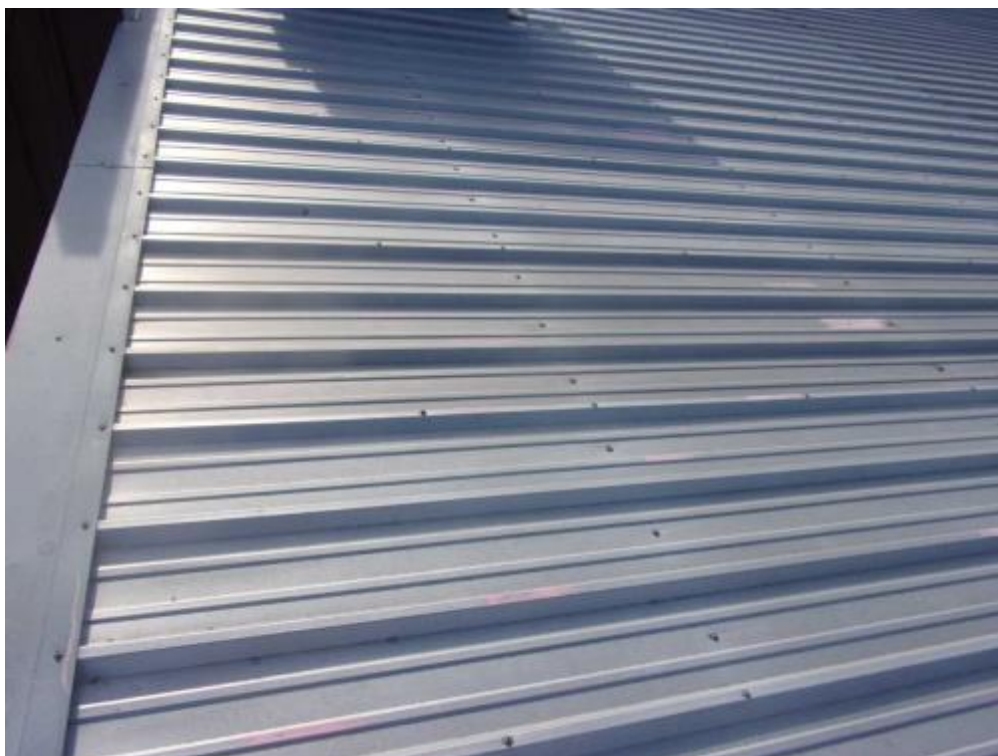
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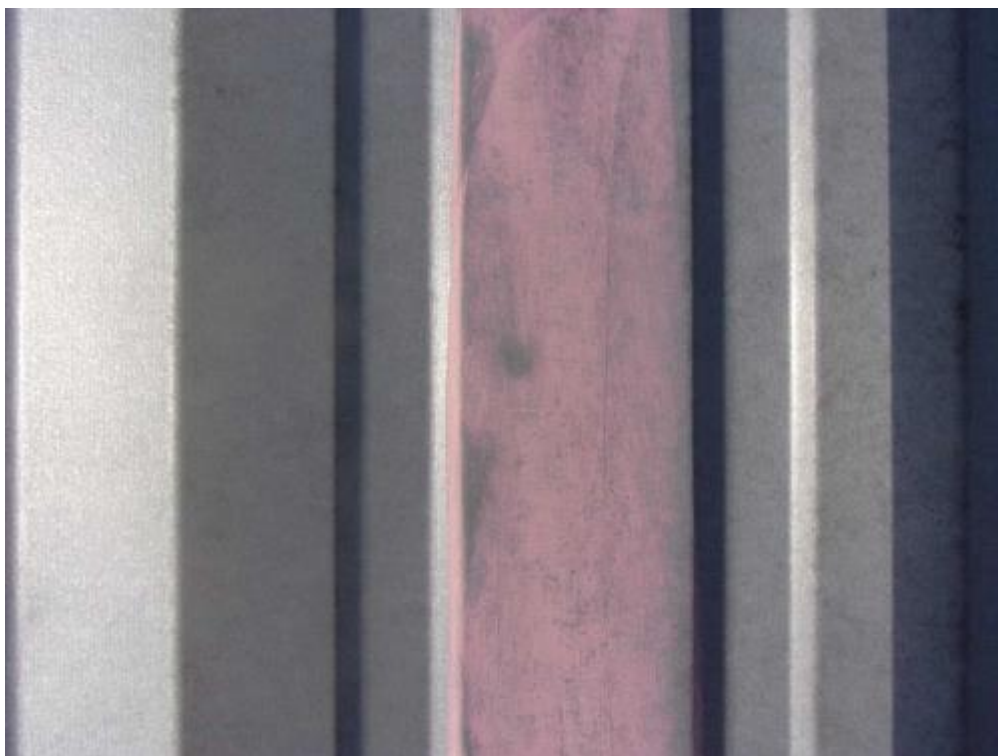
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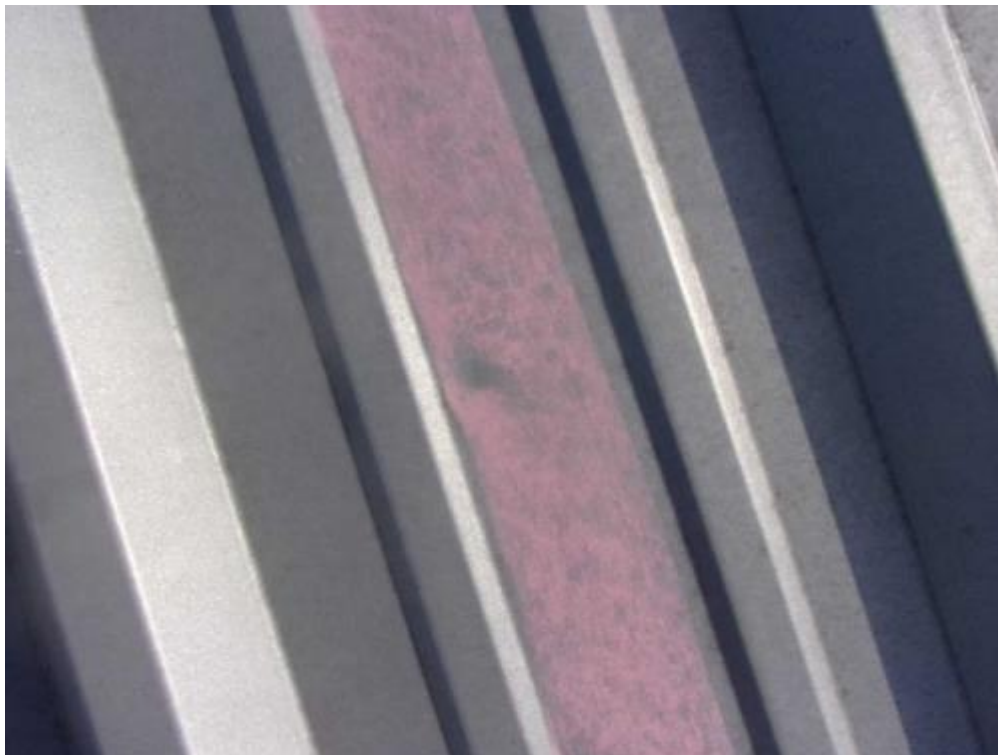




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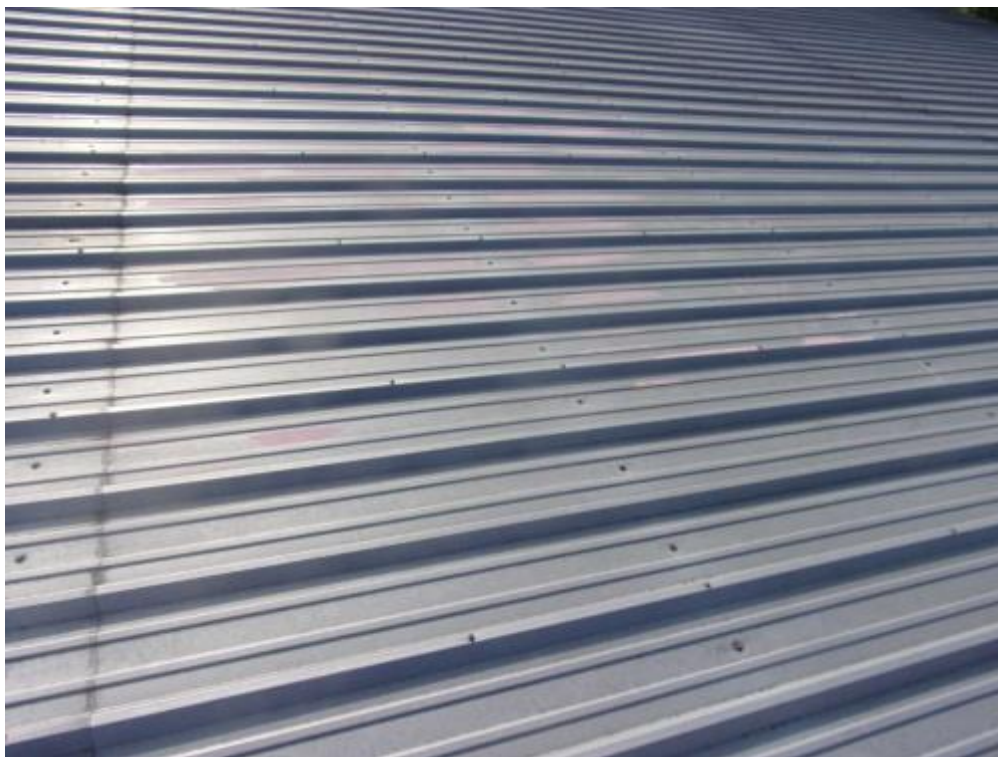




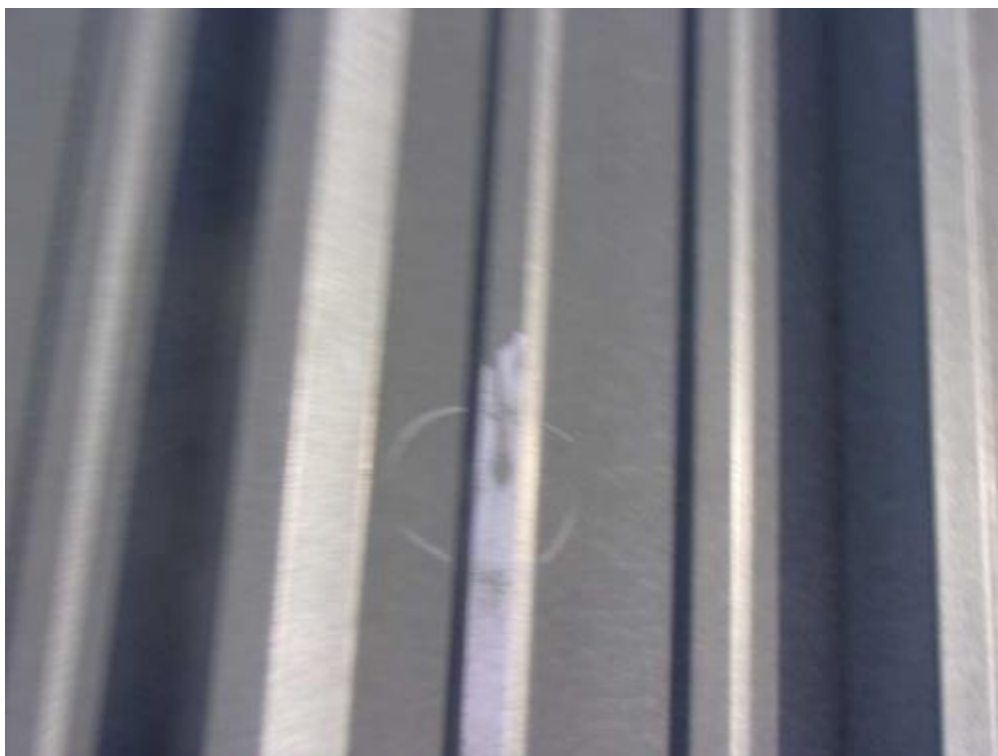
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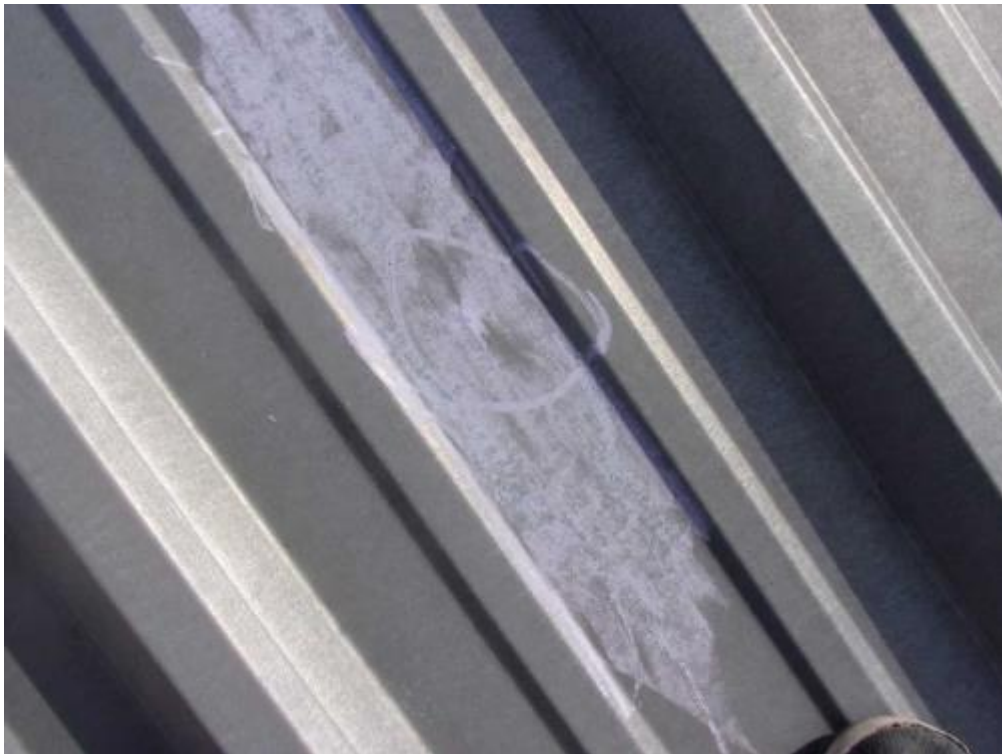
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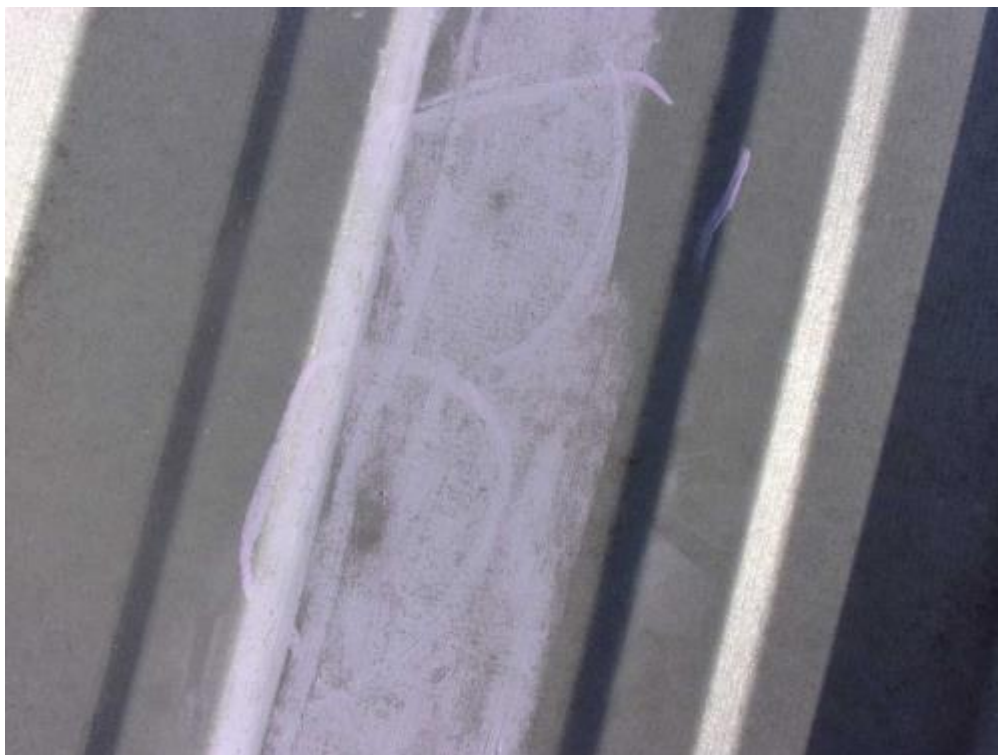




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RCAT License# 03-0287

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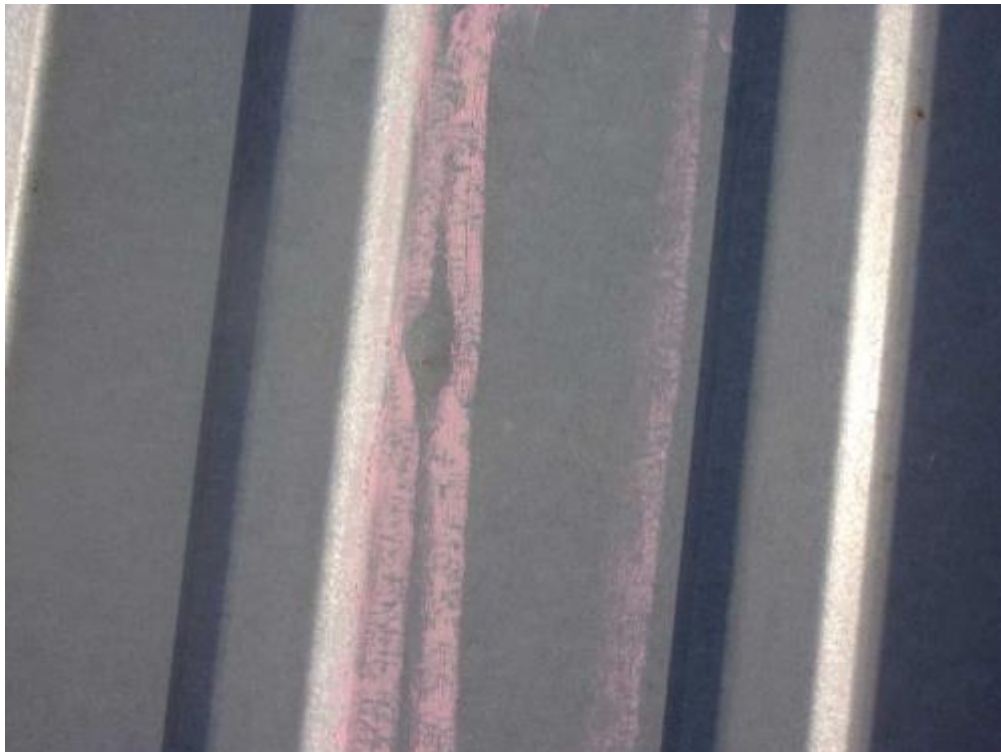
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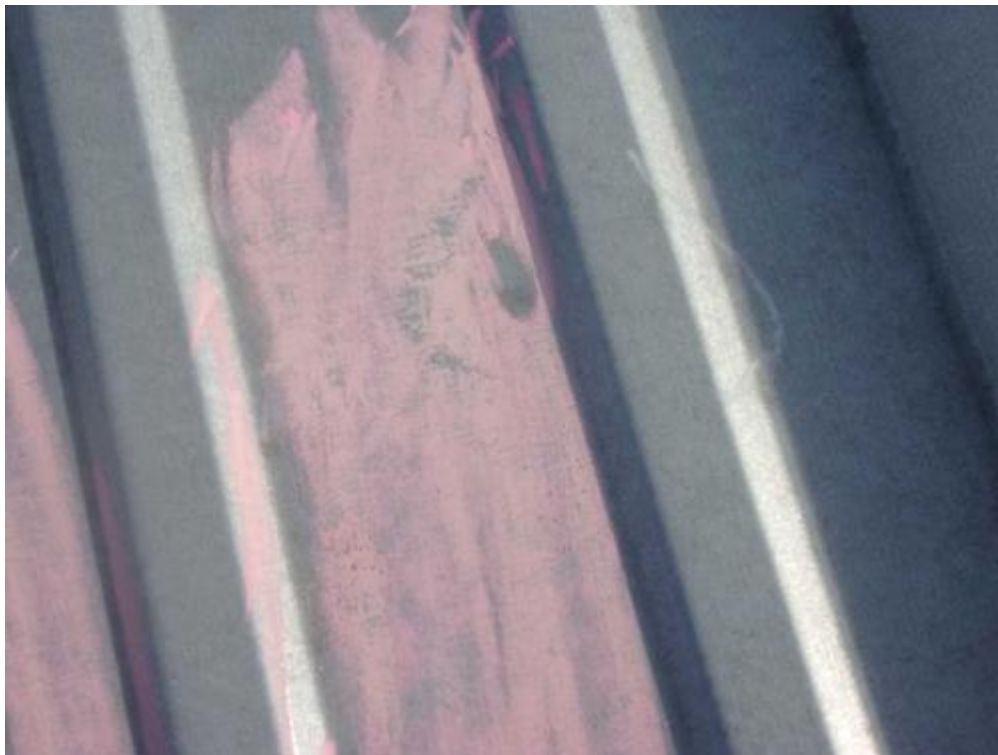




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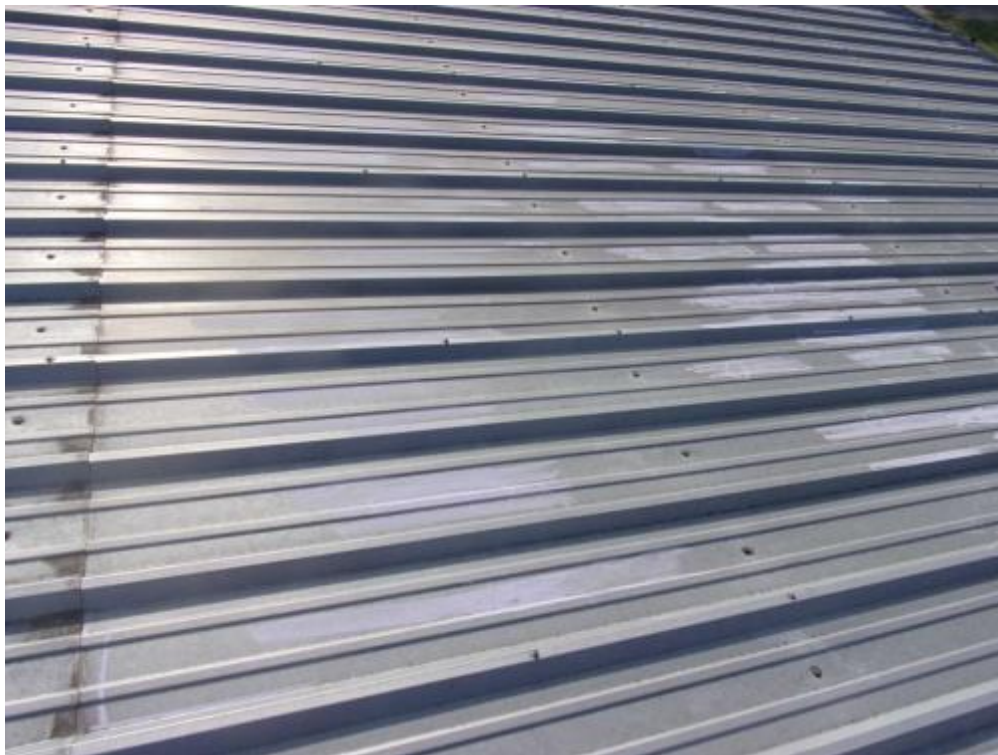




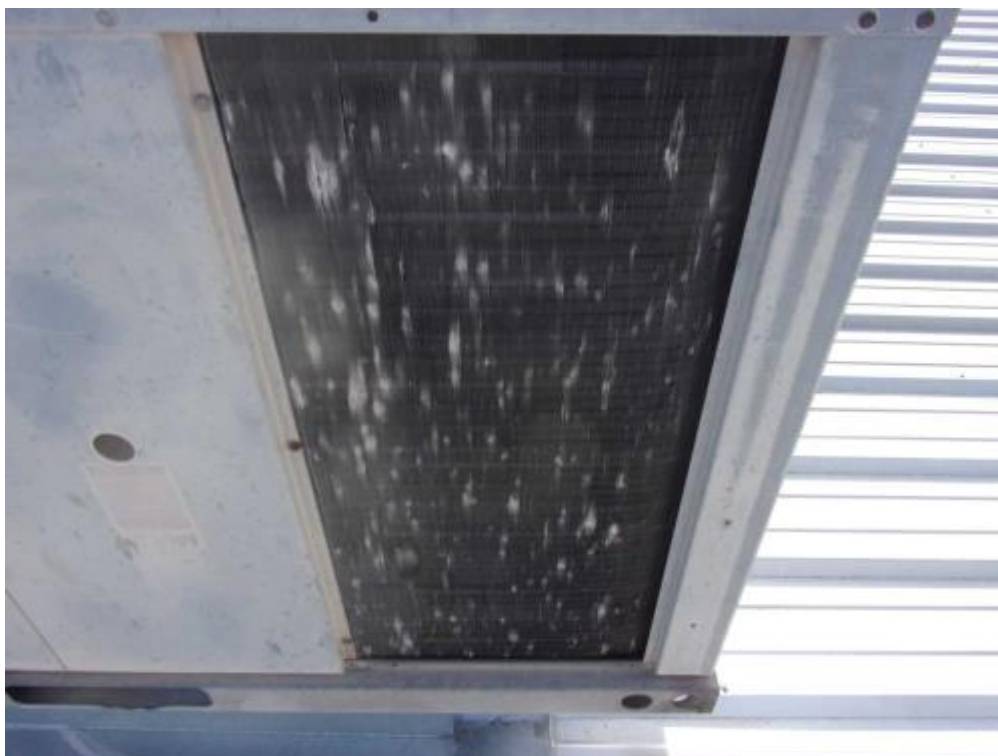
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**Triple Crown Roofing & Construction, Inc.**

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Image Detail			
Image No.	Type	Date Taken	Taken By
1	1-K Davis Address	7/21/2015	
2	2-K Davis front elevation	7/21/2015	
3	3-K Davis right elevation	7/21/2015	
4	4-K Davis rear elevation	7/21/2015	
5	5-K Davis left elevation	7/21/2015	
6	6-K Davis overview	7/21/2015	
7	8-K Davis front section hail damage	7/21/2015	
8	9-K Davis front section hail damage	7/21/2015	
9	10-K Davis front section hail damage	7/21/2015	
10	11-K Davis front section hail damage	7/21/2015	
11	12-K Davis front section hail damage	7/21/2015	
12	13-K Davis front section hail damage	7/21/2015	
13	14-K Davis front section hail damage	7/21/2015	
14	16-K Davis front section hail damage	7/21/2015	
15	17-K Davis front section hail damage	7/21/2015	
16	18-K Davis front section hail damage	7/21/2015	
17	19-K Davis	7/21/2015	


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**Continued - Image Detail**

<b>Image No.</b>	<b>Type</b>	<b>Date Taken</b>	<b>Taken By</b>
	front section hail damage		
18	20-K Davis	7/21/2015	
	front section hail damage		
19	21-K Davis	7/21/2015	
	Front section 10'x10' square with 11+ hail impacts		
20	22-K Davis	7/21/2015	
	Front section 10'x10' square overview		
21	23-K Davis	7/21/2015	
	middle section hail damage		
22	25-K Davis	7/21/2015	
	middle section hail damage		
23	27-K Davis	7/21/2015	
	middle section hail damage		
24	28-K Davis	7/21/2015	
	middle section hail damage		
25	30-K Davis	7/21/2015	
	middle section hail damage		
26	31-K Davis	7/21/2015	
	middle section hail damage		
27	32-K Davis	7/21/2015	
	middle section hail damage		
28	33-K Davis	7/21/2015	
	middle section hail damage		
29	35-K Davis	7/21/2015	
	middle section 10'x10' square overview with 11+ hail impacts		
30	37-K Davis	7/21/2015	
	back section hail damage		
31	38-K Davis	7/21/2015	
	back section hail damage		
32	39-K Davis	7/21/2015	
	back section hail damage		
33	41-K Davis	7/21/2015	
	back section hail damage		
34	43-K Davis	7/21/2015	
	back section hail damage		


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**Continued - Image Detail**

<b>Image No.</b>	<b>Type</b>	<b>Date Taken</b>	<b>Taken By</b>
35	44-K Davis back section hail damage	7/21/2015	
36	45-K Davis back section hail damage	7/21/2015	
37	46-K Davis back section hail damage	7/21/2015	
38	47-K Davis back section 10'x10' square with 11+ hail impacts	7/21/2015	
39	49-K Davis AC comb on 3 sides	7/21/2015	
40	51-K Davis AC comb on 3 sides	7/21/2015	
41	52-K Davis AC comb on 3 sides	7/21/2015	
42	55-K Davis coping cap hail damage	7/21/2015	
43	57-K Davis coping cap hail damage	7/21/2015	
44	58-K Davis coping cap hail damage	7/21/2015	
45	59-K Davis coping cap hail damage	7/21/2015	
46	61-K Davis coping cap hail damage	7/21/2015	
47	63-K Davis coping cap hail damage	7/21/2015	
48	64-K Davis coping cap hail damage	7/21/2015	
49	66-K Davis missing coping cap	7/21/2015	
50	67-K Davis missing coping cap	7/21/2015	
51	68-K Davis coping cap hail damage	7/21/2015	
52	69-K Davis	7/21/2015	


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**Continued - Image Detail**

<b>Image No.</b>	<b>Type</b>	<b>Date Taken</b>	<b>Taken By</b>
53	70-K Davis AC trim hail damage R&R	7/21/2015	
54	71-K Davis AC trim hail damage R&R	7/21/2015	
55	72-K Davis broken window	7/21/2015	
56	74-K Davis broken window	7/21/2015	
57	76-K Davis broken window	7/21/2015	
58	77-K Davis broken window	7/21/2015	
59	79-K Davis downspout hail damage 26'	7/21/2015	
60	80-K Davis close up hail damage to downspout	7/21/2015	
61	81-K Davis broken window	7/21/2015	
62	83-K Davis hail damage to grill	7/21/2015	
63	84-K Davis broken window	7/21/2015	
64	85-K Davis broken window	7/21/2015	
65	86-K Davis broken window	7/21/2015	
66	88-K Davis broken window	7/21/2015	
67	89-K Davis broken window	7/21/2015	
68	90-K Davis	7/21/2015	
69	91-K Davis broken window	7/21/2015	
70	92-K Davis	7/21/2015	


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**Continued - Image Detail**

<b>Image No.</b>	<b>Type</b>	<b>Date Taken</b>	<b>Taken By</b>
	exposed hole		
71	93-K Davis insulation damage from water leak	7/21/2015	
72	94-K Davis insulation damage	7/21/2015	
73	96-K Davis insulation damage from water leak	7/21/2015	
74	98-K Davis insulation damage from water leak	7/21/2015	
75	99-K Davis insulation damage from water leak	7/21/2015	
76	100-K Davis insulation damage from water leak	7/21/2015	
77	101-K Davis insulation damage	7/21/2015	
78	102-K Davis insulation damage from water leak	7/21/2015	
79	104-K Davis insulation damage	7/21/2015	
80	105-K Davis insulation damage from water leak	7/21/2015	
81	106-K Davis front section hail damage	7/21/2015	
82	107-K Davis front section hail damage	7/21/2015	
83	108-K Davis front section hail damage	7/21/2015	
84	110-K Davis front section hail damage	7/21/2015	
85	111-K Davis middle section 10'x10' square with 11+ hail impacts	7/21/2015	
86	112-K Davis raer section hail damage	7/21/2015	
87	113-K Davis raer section hail damage	7/21/2015	




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**Continued - Image Detail**

<b>Image No.</b>	<b>Type</b>	<b>Date Taken</b>	<b>Taken By</b>
88	114-K Davis raer section hail damage	7/21/2015	
89	115-K Davis rear section 10'x10' square with 11+ hail impacts	7/21/2015	
90	116-K Davis AC comb 3 sides	7/21/2015	
91	119-K Davis coping cap hail damage	7/21/2015	
92	120-K Davis coping cap hail damage	7/21/2015	
93	121-K Davis rear gutter hail damage	7/21/2015	
94	122-K Davis broken window	7/21/2015	
95	123-K Davis hail damage to 26' downspout	7/21/2015	
96	124-K Davis broken window	7/21/2015	
97	125-K Davis insulation damage from water leak	7/21/2015	

**Cause No.: CV44031**

<b>CHRISTOPHER DAVIS, JR.,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
<b>V.</b>	§	<b>62<sup>ND</sup> JUDICIAL DISTRICT</b>
	§	
<b>UNITED STATES LIABILITY</b>	§	
<b>INSURANCE COMPANY,</b>	§	
<b>Defendant.</b>	§	<b>HOPKINS COUNTY, TEXAS</b>

**DEFENDANT'S ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **UNITED STATES LIABILITY INSURANCE COMPANY**, Defendant in the above-styled and numbered cause, and file this its Original Answer and in support of the same would respectfully show unto the Court as follows:

**I.**  
**GENERAL DENIAL**

Subject to all written stipulations, admissions or pleadings which Defendant may hereinafter make and file in this cause, Defendant generally denies the allegations contained in Plaintiff's Petition, pursuant to Rule 92, T.R.C.P. and demands strict proof thereof, to which Defendant is entitled under the laws of this State and its Constitution.

**II.**

Defendant hereby demands a jury.

WHEREFORE, PREMISES CONSIDERED, Defendant, **UNITED STATES LIABILITY INSURANCE COMPANY**, prays that Plaintiff take nothing by this suit, but that this Defendant have judgment, plus costs of court, and such other and further relief to which it is entitled, either at law or in equity.

Respectfully submitted,

**GONZALEZ, CHISCANO, ANGULO & KASSON, PC**  
9601 McAllister Fwy., Suite 401  
San Antonio, Texas 78216  
Tel: (210) 569-8500  
Fax: (210) 569-8490

By: /s/ Richard J. Kasson  
RICHARD J. KASSON  
State Bar No. 24002392  
[rkasson@gcaklaw.com](mailto:rkasson@gcaklaw.com)  
REBECCA ADUDELLE  
State Bar No. 24097280  
[raduddell@gcaklaw.com](mailto:raduddell@gcaklaw.com)

**ATTORNEYS FOR DEFENDANT, UNITED  
STATES LIABILITY INSURANCE  
COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that on this the **13th** day of **June 2019**, a true and correct copy of the foregoing instrument was duly served upon all counsel of record via the Court's electronic filing system, facsimile and/or regular mail:

Paul A. Bezney  
Email: [bezney@ahblaw.net](mailto:bezney@ahblaw.net)  
**ADKERSON, HAUDER & BEZNEY, P.C.**  
1700 Pacific Avenue, Suite 4450  
Dallas, Texas 75201  
Tel: (214) 740-2500  
Fax: (214) 740-2544

/s/ Richard J. Kasson  
RICHARD J. KASSON

**Cause No.: CV44031**

**CHRISTOPHER DAVIS, JR.,  
Plaintiff,**

**V.**

**UNITED STATES LIABILITY  
INSURANCE COMPANY,  
Defendant.**

§  
§  
§  
§  
§  
§  
§

**IN THE DISTRICT COURT**

**62<sup>ND</sup> JUDICIAL DISTRICT**

**HOPKINS COUNTY, TEXAS**

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**DEFENDANT’S NOTICE OF REMOVAL**

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**TO THE HONORABLE JUDGE OF SAID COURT:**

PLEASE TAKE NOTICE that on June 13, 2019, Defendant, United States Liability Insurance Company (“USLI”) filed a Notice of Removal in the United States District Court for the Eastern District of Texas, removing this case from the District Courts of Hopkins County, Texas to the United States District Court for the Eastern District of Texas, Sherman Division. A copy of the Notice of Removal that was filed in federal court is attached as *Exhibit 1*. A copy of this Notice has been sent to Plaintiff.

PLEASE TAKE FURTHER NOTICE that the Notice of Removal has been filed in accordance with the provisions of 28 U.S.C. §§ 1441, 1446 and 1446(d), and pursuant to 28 U.S.C. § 1446(d), the District Courts of Hopkins County, Texas shall proceed no further with the above-captioned case unless and until the case is remanded.

Respectfully submitted,

**GONZALEZ, CHISCANO, ANGULO & KASSON, PC**  
9601 McAllister Fwy., Suite 401  
San Antonio, Texas 78216  
Tel: (210) 569-8500  
Fax: (210) 569-8490

By: /s/ Richard J. Kasson  
RICHARD J. KASSON  
State Bar No. 24002392  
[rkasson@gcaklaw.com](mailto:rkasson@gcaklaw.com)  
REBECCA ADUDELLE  
State Bar No. 24097280  
[raduddell@gcaklaw.com](mailto:raduddell@gcaklaw.com)

**ATTORNEYS FOR DEFENDANT,  
UNITED STATES LIABILITY INSURANCE  
COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that on this the **13th** day of **June, 2019**, a true and correct copy of the foregoing instrument was duly served upon all counsel of record via the Court's electronic filing system, facsimile and/or regular mail:

Paul A. Bezney  
Email: [bezney@ahblaw.net](mailto:bezney@ahblaw.net)  
**ADKERSON, HAUDER & BEZNEY, P.C.**  
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Dallas, Texas 75201  
Tel: (214) 740-2500  
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/s/ Richard J. Kasson  
RICHARD J. KASSON